STANDARD

HINDÚ LAW BOOKS

THE VYAVAHÁRA MAYÚKHA,

TRANSLATED BY BORRADAILE:

AND

TWO ORIGINAL TREATISES

ON THE HINDU LAW OF ADOPTION,

THE DATTAKÁ MÍMÁNSÁ

AND

THE DATTAKÁ CHANDRIKÁ,

TRANSLATED BY J. C. C. SUTHERLAND.

WITH

A SYNOPSIS

OR

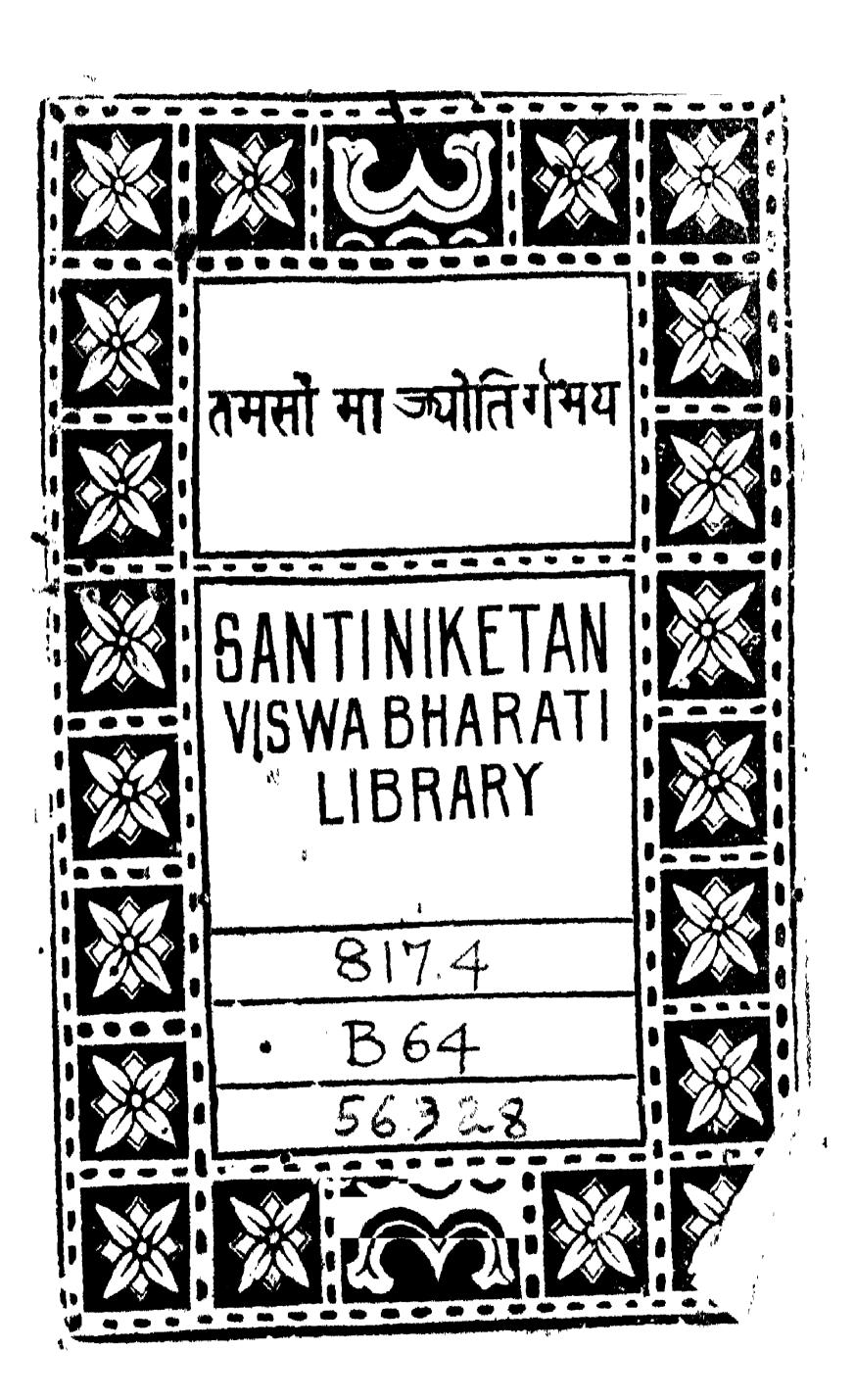
GENERAL SUMMARY OF THE

HINDÚ LAW OF ADOPTION.

MADRAS:

PRINTED BY HIGGINBOTHAM AND CO,

Law Book-sellers and Publishers.

1879.

NOTE.

THESE valuable treatises have, from the date of first publication, formed text-books of general reference in respect of the Hindu Law of Property, Inheritance and Adoption. They have long been considered as safe guides for Courts of Civil judicature in this country. A sufficient justification for their reproduction is found in the steady demand that continually exists for them. The present edition is a reprint from the original translations of Borradaile and Sutherland.

The Vyavahára Mayúkha is a general Digest of Law treating, among other subjects, of Inheritance, Contracts, &c. It forms the sixth number of the Mayúkas of Níkalantha, and is esteemed a work of considerable authority in Western India. On questions appertaining to Adoption, the Dattaká Mímánsá and the Dattaká Chandriká are admitted to be equally respected throughout India. The former is a general treatise on Adoption by Devanda Bhatta; and the latter, a philosophical disquisition on the same subject by Nanda Pandita. Where they differ the doctrines of the Mímánsá are adhered to in Bengal and by Southern jurists. The Chandricá is held to be an infallible guide in Benares and by the Mithila School.

All former editions of these scarce and useful works, now quite out of print, are not easily procurable. The publishers therefore trust that by reprinting them as one of the volumes of their Standard Indian Law publications, they are meeting a desideratum.

THE PUBLISHERS.

August 1879.

THE VYAVAHÁRA MAYÚKHA.

TRANSLATED BY BORRADAILE.

PREFACE.

THE translator of the following work, fully conscious of its imperfections, hopes that a candid statement of the motives and circumstances under which he commenced and concluded it, may avert criticism, and save him from the imputation of presumption at least, in trying his strength at a task to which he is unequal.

Placed unexpectedly in a situation requiring some knowledge of Hindú Law, for the examination of the Vyavasthás, or expositions of civil law recorded in the courts under this Presidency, and at the same time totally ignorant of the subject, as well as of the language of that law, he naturally sought for information respecting the authorities by which the Çástrís were guided in their answers to the courts.

Very little enquiry sufficed to shew, that the Mitákshará and Vyavahára Mayúkha were on all occasions quoted by them. The first was found to exist in print, and a manuscript copy of the latter was procured, very incorrect, as was afterwards discovered, but which sufficiently answered the purpose of reference at the time.

Having had at various periods occasion to translate, with a Çástrí's assistance, a few detached passages as tests of the Vyavasthás, the Sanskrit manuscript was bound with blank leaves, and these passages entered in their proper places. The facility of reference to Manu's Institutes, by its arrangement into chapters and verses, then led him to enter also the translations of its text, wherever they occurred throughout, and becoming now tolerably familiar with the names of authors, he, after a tedious and somewhat laborious collocation of the subjects of Mr. Colebrooke's Digest with the corresponding chapters in the Mayúkha, was enabled to collect translations of almost all the texts in the fifth and several succeeding chapters. Filling in, by translations of his own, the comments of the author, and the remaining texts not found in the Digest, he thus completed those chapters, and considered this sufficient encouragement to continue the translation to the end. The two first chapters were next attempted, and all that could be found to apply in Sir F. Macnaghten's Treatise, published about the time, being substituted for the Translator's own version, the work might be said to be finished, with the exception of the chapter on Inheritance; since that on Ordeals, being of little or no use, it was determined not to attempt

Had the difficulties of the chapter on Inheritance been known at the time the translation was begun, they would certainly have put a stop to it altogether: but fortunately (it may perhaps be allowed to say, if the utility of the work be admitted), the facilities met with in the first instance had led the Translator so far, that he felt bound not to leave it undone, when so much had been got through. He enjoyed likewise advantages, which few, however inclined to be useful, would ever meet with: the four Çástrís, of the Sadr 'Adálat and Suraț 'Adálat,

were at his side, with one attached to himself, and he had in the mean time gained some experience in the Law, and a little knowledge of the Sanskrit language.

Drawing therefore as much as possible from the invaluable translations by Mr. Colebrooke, both of the Digest and of the works on Inheritance, and from that of the Dattaka Mímánsá, he worked in the chapter on Inheritance, and put the finishing hand to the translation, for which indulgence is thus solicited.

The liberality of the Bombay Government has led them to extend their patronage and support to the book: at the same time it must be fairly stated, that such patronage does not involve responsibility for correctness, as the translation was submitted, in consequence of the season, in an unfinished state, and was honoured with such notice, probably from a desire to hold out encouragement to others to undertake useful works even if imperfectly executed, and from the personal kindness of the Head of the Government, rather than as a pledge that they were fully satisfied of its worth.

The faults of execution therefore, many as they are, rest with the Translator: he unfortunately could obtain no European aid, but would cheerfully bear the charge of rashness and incompetence, if the merit be conceded to him, of some industry, and a sincere desire to make himself useful: he seeks no further praise; censure he trusts to have disarmed.

A short account of the nature of Hindú law-books, and of those works which have as yet appeared in English, may assist in appreciating the real value of this now submitted.

The Mitákshará gives a list of twenty sacred authors, said to have written in ancient times upon Law (among other subjects), and whose works are entitled to equal and high veneration by the moderns. Their names are: Manu, Atri, Vishṇu, Háríta, Yájñavalkya, Uçanas, Angiras, Yama, Ápastamba, Saṁvartta, Kátyáyana, Bṛhaspati, Paráçara, Vyása, Çaṅkha, Likhita, Daksha, Gautama, Çátátapa, and Vasishtha.[1] Their institutes are technically termed Smṛti, of which only a small number now exist complete, and of many only a few texts remain.

Besides these, there were institutes of the following Legislators, considered by some perhaps of inferior authority, (and therefore often termed Upasmṛti;) but now equally imperfect with those of their supposed predecessors. The names and number of both classes, indeed, are very uncertain,[2] the same author being sometimes ranked with the first, and sometimes with the second class, by different modern commentators. They are: Paiṭhínasi, Ṛshyaçriṅga, Baudháyana, Pulastya, Maríci, Gárgya, Kaçyapa, Nárada, Jábáli, Lokákshi, Kuthumi, Dhaumya, Açvaláyana, Datta. Pracetas, Bṛgu, Viçvamitra, Devala,

1—Pref. Strange's Elem. page xii. 2—Pref. to Digest, page xiii.

Sumantu Vyághra, Satyavrata, A'treya, Vyása, Soma, Kṛshṇájini, Náciketu, Márkaṇḍeya, and perhaps others.

Modern legislators seem to have composed their treatises by selecting, each, such texts from these ancient institutes as best suited their own notions, working them up with a gloss of their own, "explaining their sense, and endeavouring to reconcile seeming contradictions, to fulfil this precept of their great lawgiver (Manu, chap. 2d, v. 14) :— 'Where there are two sacred texts, seemingly inconsistent, both are held to be law, for both are pronounced by the wise to be valid and reconcileable.'"[1]

The numerous and conflicting volumes which such a system has produced, will be at once seen.[2] From them several Schools have arisen : the Gauriya (or Bengal), the Maithila, (or North Bahár), and the Benares, with the Maháráshtra, and the Drávida, or Southern school. In all but the first, the Mitákshará, one of the very earliest of these compilations, is received with respect, as the chief general authority, though in each some more modern local work is allowed to compete with it on a few points. The most remarkable of these are, the Mayúkha for the Maháráshtra and the west, the Smṛti Chandriká for the South, of India ; the Ratnákara and Chintámani, for Mithila. Bengal proper alone denies authority to the Mitákshará, having established for itself a totally different school, of which the Dáya-bhága of Jímúta Váhana is the head.[3] The references in the margin preclude the necessity of noticing the other treatises of these schools.

The first work in the English language, on the subject, was the Code drawn up during Mr. Hastings' administration. The original, in Sanskrit, "consists, like the Roman Digest, of authentic texts, with the names of their several authors regularly prefixed to them, and explained, where an explanation is requisite, in short notes taken from commentaries of high authority : it is, as far as it goes, a very excellent work" :—"But, whatever be the merit of the original, the translation of it has no authority, and is of no other use than to suggest inquiries on the many dark passages which we find in it : properly speaking indeed, we cannot call it a translation ; for though Mr. Halhed performed his part with fidelity, yet the Persian interpreter had supplied him only with a loose injudicious epitome of the original Sanskrit, in which abstract many essential passages are omitted, though several notes of little consequence are interpolated, from a vain idea of elucidating or improving the text."[4]

Upon these observations being made known to the Supreme Government, the Digest of Jagannátha was, under their authority, com-

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1—Pref. Digest xi.

2—Pref. to the Digest, to the Inheritance, and to Strange's Elements.

3—Pref. to Inh. iv.

4—Sir W. Jones quoted in Preface, Digest IX—X.

piled, "from various texts, and from commentaries on the institutes of Law." But: "In restricting the compilation to the law of contracts and successions, he [Jagannátha] has omitted the law of evidence, the rules of pleading, the rights of landlord and tenant, the decision of questions respecting boundaries, with some other topics, which should be likewise treated, for the purpose of assisting courts of civil judicature in deciding private contests according to the laws, which the Hindú subjects of Great Britain hold sacred."[1]

The great value of the Digest to English readers will be found, probably, in its collection of texts, which includes, under each of its heads, all the above sacred authors. Scarcely one of those from Manu applicable to Inheritance has been omitted by Jagannátha, and a classification, made for private use by the Translator, of all the texts of each author contained in the present translations on Inheritance, shews that the Digest contains a great many of every author not to be met with in the others. When freed from the perplexing commentary, it forms an excellent key to those Sanskrit works of a similar nature, called Smṛti Saṅgraha, as the English version of any text may be found in a few minutes.

Sir William Jones's translation of the Institutes of Manu, coming in order of time between the above Code and Digest, is too famous to need notice. The opinion of it expressed in Sir T. Strange's work would, it is believed, hold good here, "that it is of authority as a text-book, but no further."

To make up for the deficiencies in the Code and the Digest. Mr. Colebrooke "long ago undertook a new compilation of the law of successions with other collections of Hindú Law, under the sanction of the "Government of Bengal, for preparing for publication a supplementary "Digest of such parts of the law as he considered to be most useful;" and in the meantime gave to the world a translation of the two treatises on Inheritance, containing the doctrines of the two great schools, of Bengal and Benares, elucidated by notes from their respective adherents.[2]

The first of these, the Dáya-bhága, is restricted in its operation to Bengal proper, as is the Dáya-krama-saṅgraha, a work of the same school, subsequently translated into English by Mr. Wynch, of which no copy has yet reached these parts.

The other, the Mitákshará, is equally authoritative with us on this side of India, as elsewhere, but, as previously observed, the doctrines of it are sometimes opposed by the Mayúkha, which is allowed to compete with it.

1—Preface to Digest, page XI, and to Inheritance, page II; likewise Stranges' Elements, 2nd, 150.

2—Preface to Inheritance, page III.

Two treatises on Adoption were in the same manner translated by Mr. T. C. C. Sutherland. As neither of them exists in the original in this part of the country, the Çástrís have no knowledge of them, and take the Mayúkha for their authority on that head. But great praise has been passed on the English version, by a high authority.[1]

The work of Sir F. Macnaghten, being avowedly controversial and founded on Bengal law, is of no utility as a guide here. Every one must regret, that the two first chapters of the Mitákshará, those on judicial proceedings and evidence, were not given entire. Valuable as any extracts from such a work are, the insertion of the translation complete, would, we may venture to say, have doubled the value of this book to practical readers.

Of the last work published, the Elements of Hindú Law, by Sir T. Strange, it is scarcely necessary to make mention, as it is in every one's hands; but if it be not too presumptuous, we may remark that the learned author has cheerfully followed the steps, and entirely adopted the doctrine and advice, of the greatest of all European authorities on the subject of Hindú law and literature, which is of itself sufficient to stamp a high value on the book.

Of Nílakaṁṭha, the author of the Mayúkha, scarcely any thing is known here beyond his name, though his work is by repute acknowledged at Benares, Bengal, and also in Tanjore.[2] Even at Puná, where one of his descendants, Hara Bhatta Kassíkar, of great repute for learning, resided till very lately, no certain information is to be gained. The family is Deshast Maháráshtra, long settled at Benares, where Çaṁkara Bhatta the father, [author of several very celebrated works on the Mímáṁsa particularly the Dvaita Nirṇaya, which his son mentions] lived, and where our author was born, as he tells us in his preface, but at what date is uncertain. Hara Bhatta, above alluded to, says it was upwards of 200 years ago, whilst the general opinion is, that his writings were first circulated about 125 years ago. The manner in which, at the conclusion of the book, he speaks of himself and the dynasty under which he lived, might afford a clue, were not the authenticity of the passage doubted by some, and its meaning unknown to all. It is said that at Bhareh, a town situated at the confluence of the Chambal and Jamná, a Rájá bearing the title of Saṅgara or Yuddha-sura, the ruler of a Maṇḍal in that part of the country, held his court: that Bhagvant Deva, one of his successors, took our author under his protection, and that he, out of gratitude, gave the name of his patron to the book thus compiled under his auspices; and that sixteen generations have elapsed since the parties flourished.[3]

1—Preface to Strange's Elements, XXIV.

2—Strange's Elements 2nd, 164 note.

3—For this account I am indebted to a kind and valued friend, Captain H. D. Robertson, Collector of Puná, who has also most materially assisted me by procuring translations and explanations of doubtful and disputed passages from the Puná Pandits.

Mr. Colebrooke declares him to be "an authority, concurrently with the Mitákshará, among the Mahrattas"[1]: and in an account of the different schools of law furnished by him to Sir T. Strange,[2] Mr. Colebrooke observed: "In the west of India, and particularly among the Mahrattas, the greatest authority after the Mitákshará, is Nílakaṁṭha, author of the Vyavahára Mayúkha, and of other treatises bearing the same title."

These, twelve in number, were collectively styled by their author, Bhagvata Bháskara, and in detail are generally classed as follows: 1st Saṁskára Mayúkha, expounding the various rites and ceremonies of a Hindú's life. 2nd A'chára Mayúkha, treating of rules for conduct, in morals and religion. 3rd Samaya Mayúkha, of dates and astronomical calculations for regulating the chief actions of life. 4th Çráddha Mayúkha, of funeral ceremonies. 5th Níti Mayúkha, of the power, conduct, and duties of kings. 6th Vyavahára Mayúkha, of law and justice. 7th Dána Mayúkha, of religious gifts. 8th Utsarga Mayúkha, of public edifices. 9th Pratishṭhá Mayúkha, of the consecration of the same. 10th Prayáçcitta Mayúkha, of penance and expiation. 11th Çuddha Mayúkha, of purification. 12th Çántí Mayúkha, of planetary influence and worship.

The present one, the Vyavahára Mayúkha, is strictly speaking the only one touching upon law. Its doctrines are quoted and alluded to with approbation by Mr. Colebrooke in more than one place in his translations, and by Mr. Sutherland in the Dattaka Mímáṁsá and Chandriká; and appears, particularly in the concluding chapters, to be rather of the nature of a smṛti saṁgraha, or general collection of texts, without much commentary, than of those books elucidating the doctrines of one favourite author (like the Mitákshará on Yájñavalkya) by a perpetual gloss, interspersed with a few texts out of the other institutes.

The reference to the authorities, troublesome as many may find them, are not without value, having been given as vouchers for the correctness of the version, as well as to guide those referring to the Mayúkha on business, to the particular page of the work where each text is to be found. The example of Mr. Colebrooke warrants this. In the cases of Sir T. Strange's Elements, vol. 2nd, explained by him, the Mitákshará and Digest are quoted indiscriminately in many places. But it is necessary, with regard to chapter fourth on Inheritance, to explain, that the reading of the Mitákshará has, for reasons stated, always been retained in preference either to Jímúta Váhana, or the Digest. Many of the texts, however, are only to be found in the two latter, or in the last one, and as Nílakaṁṭha's doctrine sometimes accords with one and sometimes with the other, the reference will enable the professional reader to judge which school his author follows, still remembering that conformity with the Mitákshará should

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1—Preface to Inheritance, page iv. 2—Strange's Elements 1st, 316.

be aimed at as far as consistency will allow, with which hope, the author's peculiar opinions, where he differs materially, have mostly been pointed out.

The Çástrís of the Courts can at any time discover the distinction, if called upon; for in the Sanskrit edition, prepared (from five manuscripts found in Surat, collated with an old one borrowed from Puná, one from Broach, and a new copy sent from Benares) by the five Government Çástrís of this place, and afterwards printed at Bombay by order of Government, care was taken to insert, opposite to every text of Manu, the number of the chapter and verse, and opposite to every text quoted from Yájñavalkya, the leaf and page of the Sanskrit large edition of the Mitákshará printed in Calcutta, of which the Courts generally have copies. The commencement of each page of the original is likewise denoted by the Roman numerals in the margin.

PREFACE OF THE AUTHOR.

1. Salutation to Gaṇeça. Having declared the rules for a king's guidance[1] and having duly bowed myself before the lotos-footed Sun, I, Nílakaṁṭha, proceed to compose something on decisions of law.

2. I meditate upon Çaṁkara, my Guru [whom I consider as an incarnation of him] who wears the crescent on his forehead, the lord of the bull, and consort of Párvati, he who gives counsel to all those who visit the holy city.

3. He [who is] the chief of men [Çiva] has assumed a double form, with a view to point out [by the simile below given, that which is correct of] the two conflicting paths [of the divisibility or indivisibility of the spirit of god].[2] Çrí Çaṁkara [Çiva] himself is one form: Bhatta Çaṁkara is the other form here on earth, who has admitted the reasoning, that the spirit of god is indivisible.[3]

4. False reasoners, deceivers, have on this point in some sort advocated the doctrine of divisibility, but it has been thrown out by me, as unfounded. For this reason there is no deficiency of discussion on my part; for the worship of god is not the less complete for want of flowers from the sky. [a miracle].

1—In the last chapter of the A'chára Mayúkha; see a similar work, Reports 1st 460-61, tit. Ráj dharma.

2—The one side supported by the Mádhava, the other by the Hemádri.

3—Those holding the contrary, rejecting the doctrine of Máya, the cornerstone of the doctrine of indivisibility.

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THE VYAVAHA'RA MAYU'KHA,

CONTENTS.

THE VYAVÁHÁRA MAYÚKHA.

A COMPLETE TREATISE

ON

HINDÚ LAW,

BY NÍLAKAṂṬHA BHAṬṬA.

CHAPTER I.

PROCEEDINGS AT LAW [VYAVAHÁRA MÁTREKÁ.]

SECTION I.

Definition of Justice.

1. JUSTICE is the consistent art or practice [by a third person] of discovering the unknown point of "who is in the wrong" between two persons mutually disputing. Or that business, in which a Plaintiff and Defendant exist as the Agents, which is supported with proof, by possession and witnesses, and which admits of a fair discrimination between conflicting pleadings, is called Justice. But according to the Madanaratna.[1] "In an answer of confession, the further [usual] proceedings in the suit are unnecessary." This is one part of the law; the other is calculated for the exclusion of [unfounded] disputes, false pleadings, and the like.

II.

2. Now these are the divisions of it. Yájñavalkya;[2] "When a person aggrieved by another, in a manner contrary to law, or approved usage, represents it to the King, or to the Chief Judge, that representation is termed the subject of a judicial proceeding." *Aggrieved*, abused.

Heads of Law.

3. Eighteen divisions of it are laid down by Manu:[3] "Of those titles, the first, is debt on loans for consumption; the second, deposits and loans for use; the third, sale

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1—Followed by our author on many points, contrary to the Benares doctrines.

2—Macnaghten, page 409.

3—Ch. 8th, vs. 4th, ad. 7th, Colebrooke on Obligations, 18, para. 36. The arrangement of the Mayúkha varies from the above, though the titles, or chapters, will be found the same, in names and in number, by excluding the three first, of introductory chapters, and the last, on miscellaneous topics, or sundries, which make twenty-two in all.

without ownership; the fourth, concerns among partners; the fifth, subtraction of what has been given; the sixth, non-payment of wages or hire; the seventh, non-performance of agreements; the eighth, rescission of sale and purchase; the ninth, disputes between master and servant; the tenth, contests on boundaries; the eleventh and twelfth, assault and slander; the thirteenth, larceny; the fourteenth, robbery and other violence; the fifteenth, adultery; the sixteenth, altercation between man and wife and their several duties; the seventeenth, the law of inheritance; the eighteenth, gaming, with dice and with living creatures: these eighteen titles of law are settled as the groundwork of all judicial procedure in this world." *Subtraction*, non-performance. —*Rescission*, repentance. *Gaming*, [dyútam], playing with inanimate agents: when with live agents, it is called samâhvaya.

4. Here, though it is said by Bṛhaspati:[1] "Killing a human being, robbery, touching another man's wife, and both species of assault, compose the four kinds of heinous offences," we may infer that by reason of the distinctions in the nature of crimes, connection with women, and assault by word or deed, are here enumerated distinct and different, from the example of a bull and bullock. But I will hereafter clearly point out the distinctions [or characteristics] of these eighteen titles of law, [each in its separate chapter].

III.

5. The initials of Justice.[2] Bṛhaspati: "Let them erect a house in the midst of a fortified town, having in its vicinity water and trees; apart from other buildings, and situated in the east quarter, with the door on that side; there let them determine on erecting a properly constituted assembly house."—Or in other words, a court of justice, as it has been declared by Kátyáyana: "That place is truly termed a court of justice, where the king practices justice, discriminating between truth and falsehood, by a reference to the Dharmaçâstra." Manu:[3] "A King, desirous of inspecting judicial proceedings, must enter his court of justice, composed and sedate in his demeanour, together with Bráhmans and counsellors, who know how to give him advice. Without ostentation in his dress and ornaments, let him examine the affairs of

Constitution of a Court.

1—See post, Ch. 18th, para. 2nd.

2—Ellis's Lectures, "Part the 2nd.—Constitution of the Hindú courts; duties of the prince as chief magistrate; duties of the sabhásadáh or assessors; duties of the prádvivâka or chief-justice [who is likened to an archon, prætor, and English judge]; several descriptions of courts; institution of suits; inadmissible suits; plaint, how to be drawn; answer, how to be drawn; proof, by which party to be produced; the four steps, páda, or divisions of a suit, viz., bháshápáda and uttarapáda, pleadings of the two parties; kriyápâda, production of evidence, and sádyasiddhipáda, decision by the decree; miscellaneous subjects connected with the administration of justice; the nature of proof, pramáṇam, and its kinds, namely human proof or evidence, manushya pramáṇam, and divine proof, by oath and ordeal, divyapramáṇam; evidence, of three kinds; namely, likhita, writings; sákshí, witnesses; bhukti, enjoyment; nature of each briefly stated." This exactly corresponds with the two first chapters of the Mayúkha. *Initials of Justice*,—literally the "letters, or alphabet," of law.

3—Ch. 8th, vs. 1st, and [the last hemistich of] the 2nd.

litigant parties." Yájñavalkya:[1] "The king, divested of anger and avarice, and associated with learned Bráhmans, should investigate judicial proceedings, conformably to the sacred code of laws."—*The king*, is any one, whoever properly affords protection to the people, not merely one of the royal tribe or Kshatriya.

Officers of the Court.

6. Kátyáyana:[2] "A king who investigates together with his chief judge [prádviváka] minister, bráhmans, domestic priest, and assessors of the court, according to law, shall attain paradise." Here, the *bráhmans* are those [aniyukta] unappointed [to the court]: but the *ministers* are those appointed. Even as it has been said:[3] "A person, whether appointed or not, is entitled to furnish legal advice."

Examiner or chief judge.

7. Brhaspati gives this definition of the chief judge [prádviváka]: "He who in a cause asks the questions, and in like manner cross-examines, and who, extracting the [desired] information, speaks first, is termed the chief judge." Vyása shews the nature of a minister, or councillor [amátya:] Let the king appoint as his minister, a man well-informed in the meaning of all the sciences, free from avarice, one who speaks justly, a Bráhman [vipra], wise, of a family famed of old for these qualities, being a twiceborn man [dvija]." Here the recapitulation conveyed by dvija, or a twiceborn man [after vipra] is made specially with a view to the choosing a minister, either from the royal or commercial tribe, in default of one of the priestly class [vipra]: for thus says Kátyáyana[4]: "If there be no learned Bráhman, let the king then associate in the administration, a Kshatriya or a Vaiçya, skilled in the Dharmaçástra; let him carefully keep a Çúdra [from such affairs]."

Assessors

8. And Yájñavalkya thus declares an assessor [sabhya]:[5] "Persons who are versed in literature, acquainted with the law, addicted to truth, and impartial towards friend and foe, should be appointed assessors of the court, by the king."—Brhaspati gives this enumeration of them.[6] "That assembly, in which seven, five or three Bráhmans, versed in religious and worldly duties, preside, is to equal sacrificial ground."

and others.

9. The same author says: "Two persons must be appointed by the king, a secretary and an accountant, who are skilled in expounding words, and meanings, adepts at counting, free from error, and learned in the different characters [or dialects]" *Words*, the science of etymology. *Meanings*, a dictionary. Kátyáyana: "Merchants who have just views of justice are to be there appointed hearers of causes." *There*, in the assembly. Brhaspati: "A vera-

1—2—3—Mentn. page 407.

4—Macnaghten, page 408. There is some difference in the text here: my version is literal.

5—Mentn. page 407. 6—Mentn. page 407.

cious man must be specially appointed, under the orders of the assessors, for calling and taking charge of the witnesses, plaintiffs, and defendants." And he must be none other than a Çúdra, even as Vyása says: "But an attentive servant must be appointed by the king for collecting the materials for trial, a stout Çúdra, whose ancestors have followed the same employment, and he shall be placed under the orders of the assessors." Yájñavalkya:[1] "But if justice cannot be supervised by the king in person, from press of [other] business, let a Bráhman acquainted with all duties be associated with the assessors."

Their respective duties.

10. Bṛhaspati mentions the duties, of the king, the chief Judge, and the rest: "The chief Judge is to report the case; the king is to give the necessary orders; the assessors are to investigate the matter [in the first instance]; the accountant is to calculate the money [transactions]; and the secretary is to take down the proceedings of the trial." The same author says: "Let the king sit with his face to the east, the assessors looking towards the north, the accountant facing the west, and the secretary turning towards the south." Yájñavalkya, speaking of the royal court, says further, respecting judicial functionaries:[2] "The superintendants [adhikṛtáḥ] appointed by the prince, the separate trades [púgáḥ], the joint companies [çrení], as well as families [kuláni], must be accounted to rank according to the order in which they are here named, in all rules of justice among men." *Superintendents* appointed by the prince, the chief Judge and the rest. *Separate trades* [lit. a multitude] a collection of men getting their living by different trades, inhabitants of the same village, but of different caste. *Joint companies* are the very opposite of separate trades. *Families*, an union of kinsmen, connexions, and cognate kindred.[3] Bṛhaspati also says; "For those who wander in forests, let an office be established in the forest, that for soldiers in their quarters, and in like manner that for the merchants, in their meetings." *An office*, a court of justice.

Court hours and days.

11. Kátyáyana notes the time for inspecting judicial cases: "The king shall give decisions on complaints, in the place appointed for the court, in the first part of the day, in the way laid down in the Çástra, putting down those who act inimically; passing over the first eighth portion of the

1—Macnaghten, page 408.

2—Mcntu, p 433, q. v. The 'puga' and 'çreni' are here translated according to the commentary. 'Corporation' and 'community' might sufficiently denote them could we divest ourselves of English associations in using those terms, to which the Hindu societies do not in all respects conform. Mention of them occurs again at sec. 2nd, para. 1st, and chapter 2nd, sec. 3rd, para. 6th, and in the 12th chapter, para. 3rd. They are also very clearly enumerated and elucidated, in detail, by Mr. Ellis; see Asiatic Journal, v. 8th, p. 17-21, and Strange's Elem. 1st, 319.

3—Jñyati, denoting, from the context, 'kindred,' and not 'caste.'

day, the period which includes the next three eighths,[1] is declared by sages to be the very best time pointed out by the Çástra for judicial business." Half the first watch [yáma] is the eighth of the day; the next three eighths are contained between that time and [the sun's reaching] the zenith. Samvartta again declares the days to be set apart as unfit [for business]: "The man who is wise will not look at judicial business on the days here mentioned, the fourteenth, the new moon, the full moon, and likewise the eighth [of each fortnight]." Bṛhaspati: "Let the king, sitting there in the first part of the day, together with old men, his ministers and his servants, examine causes and hear them read the puráṇas, and the laws, the religious [dharma-] as well as the moral laws." [artha-çástra] *There*, in the court. *Moral laws*, the laws of equity [níticástra].

Disagreement between law and equity, or two texts of law.

12. Nárada, on the disagreement between the religious law, and the moral law, says: "When a difference may occur between the religious law, and the moral, then let them set aside what is declared in the moral law [artha-çástra] and follow that which is enjoined by the religious law [dharma-çástra]." But where discrepancy occurs in the dharmaçástra itself, Yájñavalkya says:[2] "If two texts [smṛti] differ, reason [níti, or that which reason best supports,] must in practice [vyavahára] prevail." The faults of those who do not look to the essentials of justice are thus declared by Bṛhaspati:[3] "A decision must not be made solely by having recourse to the letter of written codes [çástra], since, if no decision were made according to the reason of the law, [or according to immemorial usage, for the word *yukti* admits both senses] there might be a failure of justice."

Customs of the country &c. to be upheld.

13. They should fully attend to the customs of the country [Deçáchára] and the like; thus Bṛhaspati says:[4] "Let all Rules, of each country, caste, and family, that have been derived and preserved from ancient times, be still observed in the same way: otherwise the subjects will rise in rebellion, discontent will be produced among the people, and the army and the Treasury will suffer injury." The twice-born classes, [dvija] in the Dakhan, take the daughter of a mother's brother in marriage. In the Madhya deça, they follow various professions, and are artizans, and eaters of kine; and in the east [púrve] the men eat fish, whilst their women are notorious prostitutes. In the North, their women drink intoxicating

Examples.

1—At midsummer, from about seven o'clock, till about half-past eleven, A. M.

2—Digest, 2nd 570 note.

3—Colc. Digest. 1st, 137-8.—2nd, 128, Ellis's Lectures in Asiatic Journal, 8th, 22.

4—Reports, vol. 1st, 65-426.

liquors, and women in their courses are by the men there considered fit to be touched. These people are not deserving of penance, or punishment for such acts as these. The Púrve are the same as the Prácyáh,[1] but in some copies they read *sarve*, 'all,' for *púrve*, that is all classes, Bráhmans and the rest. *Punishment* means legal correction. Some one here declares: "However, what is laid down by law as the penance, &c., for such acts, applies to countries which are not included among the abovementioned." But others again say: "Punishment is to be construed of the nature of Penance; thus the people of that country will escape legal punishment only; and in other countries, both legal punishment and penance will ensue."

Reference to professional men.

14. Vyása says: "If a decision cannot be obtained from the other [appointed] persons, in disputes among men who live by commerce, any handicraft, tillage, dying, or such profession, then let the matter be tried by those skilled in the same trade." Manu:[2] "Let not a prince, who seeks the good of his own soul, [hastily and alone] pronounce the law on a dispute concerning any legal observance, among twice-born men in their several orders."

VIII.

The first notice of suit or injury.

15. Kátyáyana:[3] "The king should thus interrogate a person coming before him [at a proper time, and in a respectful attitude], saying, 'Fear not, O man, but disclose by whom, where, when, and for what cause, your grievance arises?' He should then, in conjunction with his Bráhmans and assessors, deliberate upon the representation thus made, and should it appear reasonable, he shall deliver to the complainant a summons, or depute an officer for the purpose of citing the adverse party."

Arrest or duress.

16. Nárada:[4] "A person being about to prefer a claim, may arrest his adversary [evading it, or not giving satisfaction in the matter] until the arrival of the summons." The same author declares four kinds of arrest or duress [*asedha*]:[5] "Arrest is fourfold: local, temporary, inhibition from travelling, and the pursuit of a particular occupation: the person in confinement by one of these modes, shall not break away from it." He also[6] declares there is a punishment for breaking through restraint, by one thus confined: "One who, being arrested at a proper time, breaks his arrest, is to be fined." In some cases, says the same author, punishment is also to be inflicted on the party putting in duress: "But if a man inflicts duress upon any one in an illegal mode, as by confining [any of] his ten members [limbs, functions, or senses]; by stopping his speech, or breath, or the like, he

1—Those on the S. E. of the river Sarasvatí.

2—Ch. 8th. vs. 390. 3—Macnaghten, p. 410.

4—Mcntn p. 411, Strange's Elem. 1st. 387. 5—Mcntn. p. 411.

6—Mcntn. p. 411. The remaining words there appear to apply to our next text.

worthy of punishment; not the man who breaks through [such is illegal restraint]." Nárada mentions an exemption from punishment in some cases of resisting duress: "A person placed in duress whilst crossing a river, or passing a forest, or in a bad [place or] country, or during an affray, or in other [distress] does not become liable to punishment, if he break through such severe duress." Kátyáyana declares this punishment for confining one exempt from restraint: "But it is thus decreed, that he who imprisons one not amenable to confinement, shall be punished by the king."

17. The same author defines those who are exempt from confinement: "Persons standing upon a tree or hill, or situated upon an elephant, horse, carriage, or vessel; and one standing in a dangerous place, are all exempt from arrest by those enforcing a demand; as well as one afflicted with sickness, and one suffering under misfortunes, and one employed [as a minister of religion] by Yajamánas."—"Let not the King cause to be summoned, persons in a weak state, nor minors, old men, persons in danger, those actually employed in religious offices immersed in [worldy] business, those overcome with desire or habitual estrangements, nor persons employed on the duty of the king or of the Gods [utsava]"[1] "Nor those intoxicated, deranged, or idiotic; nor persons in grief, nor servants. Nor a young woman who is without friends [hínapaksha] on either side, nor any woman born of a noble family nor one lately delivered of a child, nor a damsel of the highest tribe. These are termed dependent on their relations."

Persons exempt from process.

18. "But women upon whom their families are dependent, profligates, and harlots, and those who are expelled from their families, or degraded, may be summoned." "Having well examined the charge, the King in weighty matters may summon, but in a gentle way, even those who have withdrawn [as hermits] to the woods, and the like of them."[2] Having ascertained the time, place, and comparative importance of the charge, the king may summon even those who are sick, causing them to be brought slowly in carriages." In some copies, they read, *by a messenger.*

Those not exempt.

19. A person who, being called, does not attend, deserves punishment, even as Brhaspati says: "Where a person possessed of relatives or family, from arrogance neglects to go where he is called, let them deliberate upon his punishment, in proportion to the cause at issue." Kátyáyana specifies certain grades of fine for corresponding sorts of complaints: "In petty causes, the fine shall be fifty, but in the middling, not lower than an hundred [panas], and in great causes, never less than five hundred."

Contempt.

1—Mcntn. p. 410. I have altered the translation.
2—Mcntn. page 411.

Commencement of the Pleadings.

20. Pitámaha declares what is to be done on the arrival of the person summoned: "Let the person prosecuted be placed standing before the Court with the complainant likewise." The third case [by or with] is used here in the sense of *in company with*. Kátyáyana: "Then let the Plaintiff fully tell his case, and the Defendant immediately afterwards; at the end of their pleadings then let the assessors [speak], and the Chief Judge after that." Bṛhaspati: "If the Plaintiff and Defendant should come, each saying, 'I was first [in suing],' let the Plaint be registered with reference to the class of the parties, or regulated by the injury."[1]

Attorneys permitted.

21. "Relations, or any other man duly appointed, may undertake the plea, or answer, for persons weak [in mind or body], idiots, madmen, old men, women, minors, and sick people." Nárada: "He on whose account another is litigating, whether he be appointed [*Niyukta*] by the Plaintiff or sent by the Defendant, his is the victory or defeat, by whom he is delegated." Kátáyana[2] however says:[3] "He is guilty of officiousness, who is neither brother, father, son, nor [illegible]tituted agent of the party: should he interfere, he is liable to ar[illegible]ment." But this relates to one not duly appointed.

Exceptions.

22. In some cases, the absence of a deputy is enjoined by the very same author: "In [prosecutions for] killing a Bráhman, drunkenness, robbery, adultery with a spiritual preceptor's wife, killing a man, theft [steya],[4] touching another man's wife, and also eating forbidden things; in charges for abduction, or ruin, of a virgin, assault, and forgery, as well as injury to the king, a substitute [pritivádi] is not to be given; the doer of the act shall defend his cause himself." The word *steya* is used a second time, with a view to a more particular prohibition of an attorney. A *substitute*, a deputy [or attorney].

XI.

Requisites of a good plaint.

23. Yájñávalkya points out the proceedings of the plaintiff, when the defendant has been brought up: "Let there be [a record] written in presence of the defendant, exactly what was made known by the plaintiff, marked with the year, month, and half month; the day, name, caste, and other [necessary notes]." In another smṛti it is said:[5] "That is termed a charge, or declaration, which is significant, technically precise, comprehensive, unconfused, direct, unequivocal, conform-

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1—In the [manuscript] Pariçishta, the reading is "Vado varṇ ânurûpeṇa"—In the printed one, or Víramitrodaya, "Vado varṇ ânupûrveṇa." In all the old copies of the Mayûkha "Daṇdo varṇ ânurûpeṇa." The last they all agreed to reject; of the other two readings, the first has been followed.

2—Nárada in the Mitákshará. 3—Mcntn. p. 411.

4—In the original the same word [steya] is used for both.

5—Mcntn. p. 412. Strange's Elements, 1st, 509.

able to the original complaint, probable, uncontradictory, clear, susceptible of proof, concise, not deficient, not adverse [to local and temporal usages],[1] comprising the year, season, month, fortnight, day, hour; country, situation, place, village; the complaint and its nature; the tribe, appearance, and age of the adverse party; the weight and quantity of the property in dispute; the names of the complainant, and his adversary; the names of their respective ancestors, and of the ruling kings; the grievance done, and the names of the original acquirer, and grantor." The year and other [points] here mentioned, are declared to be of use in cases of mortgage and the like. And the necessity of sometimes noting the country, &c., is declared in another smṛti:[2] "The country; place, site, tribe, name, neighbourhood, dimensions, nature of the soil, the names of ancestors, and of former kings: these ten should be specified in a suit for immovable property."

XII.

24. Kátyáyana: "Let the Chief Judge record at length the first side of the cause, as told in the [Plaintiff's] own way on paper, after it has been corrected on a writing-board, in white letters." Nárada defines the limits of correction:[3] "He may amend his declaration until the answer is given in, but being stopped by the answer, the corrections must cease." "But as long as the Defendant shall not enter the answer of the plaint, so long may the Plaintiff cause them to write any [further] account of the matter."

Correction of it.

25. The properties of a plaint being thus laid down, false plaints at variance with them, are also touched upon, though well known as fictitious. Thus in another smṛti: "Let them utterly dismiss a false suit, unknown [to reason], shewing no trespass, unmeaning, unfounded, whether incapable of proof, or contrary." *Unknown*, as if he said, 'Flowers from heaven have been stolen from me.' *Shewing no trespass*, as, 'He follows his business by the light of my lamp.' *Unmeaning*, as, 'What d'ye call it [kacaṭatapa] has been taken from me.' *Unfounded*, as, 'He living opposite to me reads with a loud voice.' *Incapable of proof*, as, 'This person laughed at me with a scowling brow,' or the like. *Contrary*, to common sense, as, 'I was abused by a dumb man.'—Plaints in opposition to the City, district, or other point, are also touched upon:[4] "That complaint which is prohibited by the Government, or detrimental to the interests of a City, or a country, or to the different trades-people, citizens, villagers and merchants, is pronounced to be inadmissible."

Plaints inadmissible.

XXII.

1—For instance, a man in Central India, [Madhyadeça,] suing for a plantation of betel-nut trees, [knowing they cannot grow at a distance from the coast,] or for mangoes, out of season, &c. Viramit. leaf 20th p. 1st.

2—Yájñavalkya—Mentu. p. 412. 3—Mentu. page 413.

4—Mentu. page 413.

26. But that suit which contains different heads of charge, does not thus partake of the nature of the false complaint; otherwise we should have the misfortune of finding a law contrary to this of Kátyáyana: "The King may also without doubt receive, from desire of seeking out the truth, that cause which contains many counts, and is decidedly admissible among legal proceedings." As for the saying, 'that a plaint jumbling together different heads of law does not stand,' it must be understood [that the different counts] may not be taken up at one time, but in their proper order.[1]

Exceptions.

27. Yájñavalkya states what is to be done when the plaint has been thus prepared:[2] "The answer of the party who has heard the declaration, must be written down in presence of the plaintiff."

The answer.

28. Nárada explains the qualities of an answer:[3] "The wise have held that to be an answer, which embraces the declaration, which is solid, clear, consistent, and obvious." Kátyáyana specifies four sorts of them:[4] A denial, a confession, a special exception, and a plea of "former judgment, are the four sorts of answer." The same author explains a denying answer [mithyottara:] "When the Defendant makes denial of the claim, that should be considered in law as an answer of denial." The same author declares this again to be of four kinds: "An answer of denial is of four kinds; as 'this is false;' 'I know not this matter;' 'I was not then present;' or 'I was not born at that time.'" An answer of assent [satyottara] is noted in another smṛti: "A declaration affirmative of the matter in dispute, is termed an assent." Nárada exemplifies a special exception [pratyavaskandana]:[5] "When the defendant acknowledges the [receipt of the] sum as declared by the plaintiff, but alleges a consideration, it is deemed a special plea." Kátyáyana thus propounds the plea of former judgment [pránnyáya]:[6] "If a man though cast at law, revive the suit, he should be considered as one previously confuted, and is called an appellant from a former decision."

Answers enumerated.

XIV.

29. The properties of an answer being thus fixed, [a defective one] is also explained in another smṛti, though the nature of an answer wanting these properties conveys intrinsic proof against itself:[7] "That is not an answer, which is dubious, not to the point, too confined, too extensive, or not embracing all parts of the declaration. That which is relative to other matter, incomplete, obscure, confused, not obvious, is a faulty answer." Kátyáyana also says: "When an answer admits the truth of the plaint on one count, and on another sets up a special

Inadmissible answers.

1—A passage, apparently a text, agreeable to this is found in Mentn.
2—Mentn. p. 413. 3—Mentn. p. 414.
4—Mentn. 414. 5—6—Cole. Digest. 1st, 370. 7—Mentn. p. 414.

exception [káranam] and at the same time denies another Count altogether, it is, from its mixed nature, held to be no answer."

30. The same author states the reason for this notice of a void answer:[1] "For in one suit, the proof cannot rest on both parties, nor can both obtain judgment, nor can two answers be offered at once." Here, the meaning is this: 'In giving a flat denial and a special exception in one answer, the actions of two different plaintiffs are opposed to each other.' It has been thus declared by Nárada:[2] "It has been recorded, that in the case of a total contradiction, the proof rests with the complainant; and in the case of a special exception, with his adversary." Therefore both parties in one cause [exhibiting proof] is contrary [to law.] Even so, both actions lie on the Defendant, when there is a jumbling of a special plea, with plea of former judgment; for it is said by Vyása: "In pleading a former judgment and special exception, the Defendant must exhibit the proof." And again by the same: "In plea of former decision, it must be satisfactorily established, by exhibiting [copy of] the decree so gained to the Chief Judge, and the rest likewise." Therefore, in pleading a former decision, it must be established, either by exhibition of the decree, or by those who saw the original decree, or the like. But in an answer setting up a special exception, the defence [must be supported] also by witnesses, documents, and other proof. Here also, [proof on both sides in one cause] is contrary [to law.] The same rules must be observed also in a mixture of three or four [pleas in one answer.]

Onus probandi. XV.

31. And in these matters, the properties of a void answer arise from conjunction: for if in due order, the properties of a [valid] answer are preserved; and this order, must depend upon the pleasure of the Plaintiff, Defendant, and the Assessors. And even thus Hárita says: "When a denial and special plea are both contained in one answer together; also a confession with any other [answer,] then which [of them] is to be taken as an answer [to that plaint]? that which contains the most important matter, or that wherein there is something of use to the action, is to be considered as the proper answer, to prevent confusion: for otherwise." 'There will be confusion' is wanting [to complete the sense].

32. The meaning of it is this: 'In a claim for gold and clothes, when it is pleaded, that the gold was not received, and that the clothes were received and returned; first let them decide about the gold, and afterwards, the point relating to the clothes may be settled.' The same course is to be pursued, in a mixture of a denial with plea of former decision, and of the latter with a special plea. Likewise, even in those disputes, where it is pleaded, 'the gold was received, but the clothes were not;' or,

XVI.

1—Macnaghten, p. 415. On the subject of the "Onus probandi," see Bentham on Evidence, p. 257. [Ch. 16th].

2—Macnaghten, p. 415.

'[the clothes] were given back;' or [where it is said:] 'I gained a former action about the clothes;' the case must be tried only with respect to the clothes, not with reference to the gold. For though it is a matter of more value, yet there is no action, or proof, upon it. But in a dispute where the Plaintiff says: 'This is my cow which ran away at such a time; I saw it in his house just now:' and the Defendant answers: 'This is utterly false; even before the time set forth [in the plaint,] it was standing at my house,' it comprehends both a denial and special plea; there is no property of a void answer in this, which is an answer of denial, [at the same time] shewing cause or special exception. The action lies here with the Defendant alone; not at all with the Plaintiff, because of this text of Háríta:[1] "When an answer involves a denial, and a special plea, the special plea is to be first considered." Even so, if there be a conjunction of a denial with plea of former judgment, or of a special plea together with plea of former judgment, in a suit of only one count, it does not partake of a void answer. In both of these cases, the proof lies with the defendant only. This is enough to shew, that in no one case can proof on both sides exist by any means.

Exhibition of proof.

33. Yájñavalkya lays down the order for exhibiting the proof, after the answer has been recorded in writing:[2]

XVII. After this, let the Plaintiff immediately get them to write down the proof of the matter complained about: when that is satisfactory he will gain the cause, but when it is otherwise, it will be reversed." This again relates to an answer of denial, but in the other kinds of answer, the exhibition of proof lies with the defendant alone. Thus Hárita:[3] "For in an answer pleading a former decree or a special exception, the defendant shall exhibit the proofs; in answer of denial, the plaintiff; but issue cannot be had in an answer of assent."

Pleadings enumerated.

34. Yájñavalkya mentions, that there are four feet, or requisites of a decided suit: "A decision in causes is shewn to have four quarters." And these four quarters are explained in another smṛti:[4] "It has four divisions; namely the declaratory, replicative, probatory, and adjudicative, and is termed quadruple." But this has reference to an answer distinct from one of assent; because in an answer of assent, there are only two members: even as Bṛhaspati says: "In an answer of denial, the cause must be completed in its four members; and likewise in a special plea; but in one confessing the claim, the suit may be considered as complete with two members."

1—Macnaghten, page 416.

2—Macnaghten, p. 449, where some little variation is found in the reading.

3—Macnaghten, p. 451.

4—Macnaghten, p. 416-17, where the whole text, of which this is only the latter hemistich, is recorded.

35. Yájñavalkya[1] "A person complained against, not having cleared himself, shall not retort, nor shall another charge a person already labouring under a charge, nor shall any thing foreign to the original complaint be introduced. But he may make a countercharge in cases of affrays, or criminal prosecutions."[2]

Retort prohibited.

Exception.

36. Nárada:[3] "That man, who forsaking his original claim, rests on other grounds, is known for a false claimant, by reason of the confusion of his proceedings." The meaning is, that the false claimant becomes [only] liable to punishment; he is not to be cast in his cause so laid. And this must be taken with reference to suits for money: Even as the same author says:[4] "A verbal error, is not fatal in all [any] civil actions; [for instance, in actions brought,] for seduction, for landed property, or for debt, the Plaintiff is to be punished, but it does not annul his claim." The second hemistich is added for the sake of clearing up the first.

XVIII.

Technical errors remediable.

37. Yájñavalkya:[5] "When witnesses are adduced on both sides, the witnesses of the first complainant [are to be examined]. If the first side be weak, or wanting in that point, those of the Defendant may be received. *The first complainant*, the Plaintiff in the suit. *The first side*, the plaint. *If it be weak*; when there is no proof required [of the plaintiff,] because of the Defendant's taking it on himself, by an answer shewing cause. The receipt of oral evidence, is put for the sake of denoting proof in other ways also.

Receipt of Evidence.

38. The same author says:[6] "A competent surety must be taken "from each party for the decision of the dispute." *The decision of the dispute*, the satisfaction of the judgment. Kátyáyana specifies who are not to be received in the matter of security: "Neither a master, nor an enemy; nor in like manner the master's foreman, nor one confined, nor in like manner, one sentenced to punishment, nor one of doubtful character at any time; neither an heir, nor a poor man, nor even one obliged to dwell elsewhere; nor one appointed on the king's business; nor an ascetic; nor he who is unable to liquidate the claim

Sureties.

Inadmissible.

1—Macnaghten, p. 417.

2—See chapters 16th and 18th.

3—Macnaghten, p. 417, where it is translated 'must be nonsuited.' I have made the text literal, to agree with the comment following.

4—Macnaghten, page 417.

5—Macnaghten, p. 420, 451, p. v. Here the text is made to apply to a general rule between plaintiff and defendant: in the Mitákshará, [Sir F. M.'s authority] it is laid down for a particular case, between two claimants for the same property and thus the Mayúkha and Mitákshará differ widely.

6—Macnaghten, p. 418. Strange's Elements, 1st, 307.

of the individual, and a sum equal to it, as a fine to the king: nor one unknown, are to be taken [as sureties] in matters requiring security." *Confined,* bound in fetters, or the like. *One of doubtful character,* one addicted to particular vices. *An heir,* sons, grandsons, and others entitled to take a man's estate. A *poor man,* one indigent. Obliged to *dwell elsewhere,* one turned out of the country. Yájñavalkya: "But the being security, contracting debts, and giving evidence, between brothers, as well as between man and wife; and likewise a father and son, if they be unseparated, is not recorded."

XIX.

Confinement in default of surety.

39. In default of security, Kátyáyana says:[1] "If a party be unable to furnish a competent surety, he is to be guarded; and at the close of each day, is to furnish wages for the payment of his guards." The same author adds: "A man of the twice born classes, who is deficient in security, shall be guarded by men accompanying him out of doors; but they shall confine in prison, Çúdras and the other [low castes] who cannot give security."

False Plaints.

40. Nárada[2] sets forth the qualities of a false plaintiff [hína-vádi]: "That man, who, entirely giving up his first ground of action, again takes up another plea, is, by reason of his passing away from one cause, decidedly known to be a false claimant." Yájñavalkya shews how to distinguish the party who is in the wrong:[3] "One who is constantly shifting his position, who licks about his mouth, whose forehead sweats, and whose countenance continually changes colour; one whose mouth dries up, and who faulters in his speech, who contradicts himself often; one who does not look up, or return an answer; who contorts his lips; one who undergoes spontaneous changes, whether mental, verbal, corporeal, or actual: such person, whether making a claim or giving evidence, is esteemed false." *His mouth,* the region of the lips.

XX.

SECTION II.

Of Proof in General (Pramáṇa.)

Nature of Proof.

1. Yájñavalkya:[4] "Evidence is said to consist of documents, possession, and witnesses. In the absence of all these, a divine test is prescribed." Kátyáyana also:[5] "When one adduces human evidence, and the other appeals to a divine test, the king will, in this instance, proceed to examine the

1—Macnaghten, p. 419. 2—Macnaghten, p. 418.

3—Vide ante, para. 36. Macnaghten, 117, p. v.

4—Macnaghten, p. 438. Strange's Elem., 1st, 309. 5—Macnaghten, p. 439.

human evidence, and will not have recourse to the divine test." "Even when human testimony is applicable to only one part of the case, that is to be received in preference; and recourse must not be had to persons willing to establish the whole case by supernatural means."

Proof by deeds.

Proof by ordeal is not declared, when living witnesses are present; and when there are deeds or documents in a cause, neither ordeal nor witnesses shall be [resorted to]. As for those rules which are set up by separate trades, [púga] joint companies [çrení] corporate bodies, [gaṇa] and the like, the proof of them must be written deeds; neither ordeal, nor witnesses."[1]

By witnesses.

XXI.

2. [2] "In nonfulfilment of a gift, as well as in gift, and in cases where a decision is required between a master and his servant; in nonfulfilment of sale, and refusal to receive goods purchased; in gambling also, whether with inanimate or living objects, when disputes are brought up, proof by witnesses is declared requisite, not by ordeal nor by documents."

And by possession.

3. In disputes respecting the making of doorways and roads, and that about enjoyment of any thing, watercourses, and the like, possession is the strongest proof, not documents,[3] nor witnesses."

Ordeal, when lawful.

4. Bṛhaspati declares ordeal to be in some cases the strongest: "Makers of false jewels, pearls, or coins; they who steal deposited articles; murderers, and those who commit adultery with other men's wives, are always to be examined by [ordeal of] oath; in charges of deadly sin, if witnesses are present, and the defendant [vádí] accepts the ordeal, the witnesses then shall not be examined. Vyása: "If he say, 'this writing was not made by me; it was forged by this man;' having laid down that writing, a decision on the case shall be made by ordeal."[4] "In the case of a capital offence committed in a desert, in an uninhabited place, at night, or in the interior of a dwelling; and in the case of a denial of a deposit, divine test must be resorted to." Bṛhaspati: "When doubts are produced in written or oral evidence; and where the circumstantial evidence is incomplete, ordeal is then to be made the means of clearing up the matter."

Matters of choice.

5. The same author states a liberty of choice in some cases, between ordeal and witnesses:[5] "In the investigation of a capital offence, or affray by deed or words, and

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1—See ante, section 1st, para. 10th; and post, Chapter 2nd, sec. 3rd, para. 6th: chap. 12th, para. 3rd.

2—See subsequent Chapters on these heads. 3—Ordeal, Mitákshará.

4—Nárada, in the Mitákshará, Macnaghten, p. 439.

5—Macnaghten, p. 439, q. v. 'Assault and battery' does not exactly define the Hindú law-term, which includes 'abuse, &c.' under this head. See Chapter 16th, sections 1st and 2nd.

in all cases of violence committed long ago, both witnesses, and divine test may be had recourse to." "Writings for debt or witnesses; as well as the entry of any trifling circumstance, or the like and ordeal, are mentioned as admissible, with a view to the well-being of the subjects." *Entry of any trifling circumstance,* one point of proof. *In an affray, by words,* meaning personal abuse, as 'you have murdered a Bráhman,' or the like.'

Explanation.

XXII.

6. But what Kátyáyana says that: "In wordy affrays, and in disputes for land, they shall not take notice of ordeal," relates to trifling cases of abuse; the word *land* is merely used, to signify fixed property [in general,] by putting a part for the whole. Even as Pitámaha says: "In disputes for fixed property, they must cause ordeal to be excluded;" therefore, if there be witnesses or other legal proof then ordeal is prohibited. Even so the same author says: "They shall cause the matter to be proved by these [three means,] by witnesses; by documentary evidence, and by possession."

Total absence of evidence.

7. Pitámaha: "Where deeds are not to be procured, nor proof by possession, nor witnesses; and there is no manifestation, [or descent, of the judgment] of the Gods, then the proof lies in the opinion of the king." Disputes, which maintain such a doubtful form, that they are not capable of being determined with certainty, the King shall decide, by his own opinion of them; for he is the lord of all. Thus the Vyavahára Mátreká is finished.

CHAPTER II

OF THE DIFFERENT MODES OF PROOF.

SECTION I.

Of Evidence by Writings (Lekhya.)

Evidence by writing.

XXIII.

1. On this subject Bṛhaspati says: Writings are declared to be of three kinds; those written by the king, made at a particular place, and likewise written by any person with his own hand; but their further subdivisions are very numerous." As for only two kinds being mentioned by Vasishtha: "Writings are understood to be of two natures, those executed among the people, and those relating to the king's affairs," it is occasioned by his considering as one, without distinguishing them, those made at a particular place, and those under a person's own hand. *Among the people*, is a parallel expression to that of, 'among mankind' [in general.] According to the author of the Saṁgraha,[1] written evidence is declared to be of two kinds, those deeds made by the king,[2] and those current among mankind.

Enumeration of them.

Viz. Deeds, of Partition,

Gift,

2. Bṛhaspati: "Writings among mankind are of seven kinds; for partition, gift, purchase, pledge, public agreements, slaves, debts, and the like: the king's orders are of three kinds."[3] "That record of partition which brothers, [or other coheirs,] execute, after making a just division by mutual consent, is called the written memorial of the distribution." And when a man has given away land, the deed which he gets drawn out, 'for holding the land as long as the moon and sun shall last unreserved, and incapable of being seized by any one,' that is known as a writing of gift. "When any one, having bought a house, field, or the like, causes a deed to be drawn up, containing an exact statement of the price, that is called a writing of purchase." "When a man, having given in pledge either moveable or fixed property, causes a writing to be made out, stating in it the conditions, whether of preserv-

Purchase,

Pledge,

1—The Smṛti Saṁgraha. 2—See post, para. 6, 8.

3—Colebrooke's Digest, 3rd, 408.

ation or enjoyment [by the mortgagee], it is called a writing of pledge." "If the people of a whole village, or of a district, mutually execute a writing, under their own signatures, among themselves, for the sake of some ordinance not contrary to the king's [laws], that is called a writing of agreement." "When a person, destitute of clothes and food, makes a writing in a forest to this effect, 'I will do your work,' that is called a writing of slavery." "When a person, taking up money at interest, makes out a deed himself, and causes the same to be done by the other party, it is termed a writing of loan, and by the wise, a deed of debt." From the words *the like*, we must understand, 'of purification, and the like.'

Agreement,

XXIV.

Slavery and Debt.

3. Kátyáyana declares what are these deeds of purification and the like: "When an accusation has been sustained, and penance for it performed, by a man, the deed certifying his purity, is known as a deed of purification, if attested by witnesses." "In all the higher [classes,] where an accusation is sustained, the writing which is passed when the dispute is finished, is known as a deed of peace." When a decision is given in boundary disputes, a deed of boundaries is drawn out." Prajápati mentions a deed of bail: "When the bailee carries the very thing bailed again to another for pledge, he shall cause a deed of pledge to be recorded in writing, and give with it the deed [he received] in the first instance."

Likewise of Purification,

Peace,

Boundaries,

Bail

and

4. Yájñavalkya also;[1] Having discharged the whole debt, he should tear up the writing, or cause another to be executed for acquittance."

Acquittance.

5. Nárada thus lays down the difference between the two kinds of writings before mentioned, those made with a person's own hand and by that of another:[2] "Documentary evidence is declared to be of two sorts; [the first] in the handwriting of the party himself, which need not have subscribing witnesses; and [the second,] in that of another person, which ought to be attested: the validity of both depends on the usage of the country." Yájñavalkya:[3] "But every document which is in the handwriting of the party himself, is considered as sufficient evidence, even without witnesses, unless obtained by force or fraud." *Force*, duress. *Fraud*, desire [to cheat], or the like. The same author states a distinction among those

Execution of Writings.

XXV.

1—Macnaghten, page 459.

2—Digest, 1st, 21. Macnaghten, p. 443-454, q. v. Of the different readings here referred to, I have adopted that of the Digest as more intelligible, [the other seeming to infer four kinds] and agreeable to our author.

3—Digest, 1st, 23.

done by another:[1] "Whatever contract has been agreed upon between parties by mutual consent, a writing shall be made of it, attested by witnesses, headed with the name of the obligor; and[2] the year, month, fortnight, day, name, tribe, family, scholastic title, the names of the parties' fathers, &c. must be specified." *Scholastic title,* as, 'one well qualified in a branch of the Rg Veda,' or the like; taking his name from a particular qualification, as, a Rg Vedí, a student of the Rg Veda. The same author says:[5] "When the transaction is completed, the borrower should sign his name with his own hand; adding, 'what is above written has the assent of me, son of such a one;' and the witnesses, being equal, shall also write, putting the names of their father first, 'I, such an one, am witness to this writing.' And the writer shall then write at the end, [of the deed itself] 'this has been written by me, the son of such an one, having been sought for the purpose by both parties.'" Equal, in number and qualifications. In some copies, for equal, they read unequal, by inserting the letter *a* [the negative sign]. Nárada:[6] "That debtor who is ignorant of the art of writing, shall cause to be written his assent; or if the witness be so, by means of another witness, in presence of all the witnesses."

Royal deeds.

XXVI.

Viz. of Gift.

6. Yájñavalkya and Brhaspati illustrate the three kinds of royal Edicts, before alluded to:[7] "Let a king, having given land or assigned fixed property, cause his gift to be written, for the information of good princes who will succeed him, either on prepared silk, or on a plate of copper, sealed above with his own signet.[8] "Having described his ancestors and himself, and stating the quantity of the gift, with the measure of the acquisition, and the divisions, and set his own hand to it, and specified the time, let him render his donation firm." *Fixed property,* a corody in mines or the like, given by the king or others, having the probable gains fixed. That which is received, is an *acquisition,* whether land or any other thing. *Its measure,* stating it to be so much. That which is given, is a *gift,* whether a house or any other thing. Its *divisions,* are the boundaries. *Stating,* reciting. Moreover: "If the king, pleased with the service or bravery of any one, bestow on him a district or other [portion of land,] by a written deed, that is a writing of favour."

Favour and Decrees.

"When the king, after going through the plaint, answer, proofs, and decision, in a cause, issues a written [decree] to the gaining party, that is called a writing of victory."[9]

1—Digest, 1st, 24.

2 and 5—Digest, 1st, 24-25. Macnaghten, 444-445.

6—Macnaghten, page 444. Digest, 1st, p. 26, where this text is ascribed to Vyása.

7—Digest, 2nd, 162, q. v.

8—For examples of this, see Asiatic Researches, vol. 9th, page 108—406, &c.

9—A text similar to this will be found, attributed to Vasishtha, in Macnaghten, p. 457.

Their execution.

7. Vyása thus mentions the king's deputy: "A Secretary specially appointed by the king himself, shall fully write down the King's grants or orders, either for peace or war, on copper-plates, or else on strong cloth." And here the same author mentions what is to be written by the king, as his own signature of acknowledgment: "He shall himself write with his own hand, the boundaries and measurement [of the disputed land, adding] 'done before me, the son of such an one, being king of such a place.'"

XXVII.

Boundaries and measurement; their acceptation will be understood from the former texts.

Royal Orders.

8. But Vasishtha mentions four kinds of royal writings: "Grants are to be considered as the first, and next decrees; these, with his orders, and respectful correspondence, are the four kinds of royal writings." That writing, whereby he communicates any business to the heads of districts, to his servants, and to the guardian of the kingdom, is called a letter of orders."

And private correspondence.

"That whereby he makes known any business to his family priest, his domestic chaplain, or his spiritual teacher, all persons to be respected and worshipped, is termed a letter of respectful address." *Grants,* and *decrees,* are already mentioned.

Renewal and proof of Writings.

9. Yájñavalkya:[1] "An instrument being in another country, or badly written, or destroyed, or effaced, or stolen, or torn, or burned, or divided, he shall cause another to be executed." Nárada:[2] "In the case of an instrument being deposited in another country, or destroyed, or badly written, or stolen; should it be in existence, time must be allowed; should it not be in existence, ocular evidence must be resorted to." *Evidence,* witnesses; in their absence, ordeal; for it is said by Kátyáyana: "In the absence of writings and witnesses, they may exhibit [proof by] ordeal in judicial matters." Yájñavalkya:[3] The correctness or validity of a disputed or doubtful writing, may be established by [comparing it with] something written [by the Defendant] with his own hand or the like [test]; by its fitness, the possibility of receipt, the existing evidence; marks; established connection, or circumstances; title, and such reasonable marks." *Fitness,* the [debtor's] want of money. *Possibility of receipt,* residence of both parties in one place. *Marks,* impression of a seal, and the like. *Evidence,* by witnesses, or other proof. *Circumstances,* amounting to connexion, as, the possible means of receipt [of the matter in dispute.] *Title,* some possible mode of acquisition. *Reasons,* inferences.

XXVIII.

Prajápati: "A decision is to be made with the greatest care, when royal orders of a king are exhibited, by producing the impression of

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1—Macnaghten, page 457. Digest, 1st, 395. 2—Macnaghten, p. 457.

3—A text very similar to this is found in Macnaghten, p. 458, yet there are so many points of difference, that I cannot safely adopt it, in opposition to the commentary of the Mayukha.

the seal set with the king's own hand, and the hand-writing of his Secretary,"

Invalid Deeds.

10. Bṛhaspati states what are bad deeds: "A writing made by persons dying, inimical, in fear, or in pain; by women; by intoxicated or profligate persons; by those diseased; or, [obtained] at night, or by fraud, or violence, does not stand good." "When only one witness, [and he] accused of crime, or a vile person, has attested a deed, it is called a false deed; and where the writer is a similar person, it is considered the same."

SECTION II.

On Evidence by Possession.—(Bhukti.)

Evidence by possession.

1. Nárada:[1] "Possession, with a clear title [ágama] affords evidence; but possession constitutes no evidence, if unaccompanied by a clear title." Vyása mentions [possession as] distinguished by various qualities, similar to that supported by title:[2] Possession is fivefold; titled, long, continuous, uninterrupted, and known to the adverse party. Nárada declares the imperfection of [right in] the thing contested, when supported by enjoyment only:[3] "He who simply pleads possession, but no title, in consequence of proving such false possession, is to be considered a thief."

When it constitutes title, and how.

XXIX.

2. And this is to be taken within a period fit for recollection of legal title: But where it is not fit, even enjoyment alone is declared to be sufficiently valid, by the same author:[4] "In cases falling within the memory of man [smárttakála] possession with a title is admitted as evidence. In cases extending beyond the memory of man, the hereditary succession of three ancestors, is admitted as evidence, even though the title be not produced." *Though the title be not produced;* the absence of title arising from the non-attainment of that fit period; because of the impossibility of determining it afterwards. In cases beyond the age of man also, the same author says, on the applying to recollection in the absence of title[5] "He who enjoys without right, even for many hundred years, the ruler of the earth should inflict on that sinner the punishment of a thief."

1—Macnaghten, p. 430. For 'title,' see Strange's Elements, 1st, 31.
2—Macnaghten, p. 430. 3—Macnaghten, p. 430.
4—Macnaghten, p. 431. It is attributed in the Mitákshará to Kátyáyana.
5—Macnaghten, p. 424-432.

3. But whereas he again says:[1] "When possession has been held, even by injustice, by three former men, including the father [of the present occupant], that is not capable of being taken away from him, when it has gone in order through three lives:" This means, 'If property enjoyed even without legal title, as well as after unjust acquisition, by three former persons including his father, is not capable of being taken away, how much less so, when it is impossible to fix the absence of legal title [in the present occupant].' Since, also, there is a text of Hárítа: "When possession has been held without very good title, but by three former men, that cannot be taken away when it has gone in order through three lives," this must be considered as of possession without a good title proper for attainment of property, and not without the form of a title altogether.

Proof of it; of whom required.

XXX.

4. What is further said in a text of Yájñavalkya:[2] "He by whom a title has been obtained, must produce it when impugned, but his son and grandson need not; for them, possession is of weight," only means, that the maker of the title alone is punishable in default of proving it, and not his sons or other heirs: but the fulfilment of their intent does not consequently [follow]. Even as Hárítа says:[3] "He by whom a title has been acquired, is subject to penalty in case of not producing it; but not his son, or his grandson; though the possession of these two also, is forfeited." Yájñavalkya:[4] "When a person dies during his defence of a cause, his heirs shall support it; enjoyment held without legal title is there of no use." *Heirs*, those who take shares in his estate, whether sons or other persons. *It*, the title in dispute.

Opponent's argument.

5. On the other hand: it may be said that the assertion of possession during a long space of time being requisite as proof, is contrary to law; because the prosecutor's defeat also occurs, from enjoyment by another during a very short space of time; from what the same author says:[5] "Loss accrues to him, who for twenty years observes his land enjoyed by another without interfering; and in the case of movable property, for ten years."

Refuted.

6. To this it is answered, that it only means there shall be a loss of the fruits, or profits produced from the land, or other thing litigated, for so long as the owner has observed [its occupation] by another, uncontested by him; but not loss of the land, or other thing itself also, because such interpretation would be contrary to the [former] text,[6] "He who enjoys without right," &c.

1—Reports 1st, 367.

2—Macnaghten, p. 432. 3—4—Macnaghten, 433.

5—Reports, vol. 2nd, 373—Macnaghten, p. 424. 6—Para. 2nd.

7. Kátyáyana :[1] "This law has been clearly settled, that no weight of title attaches to the possession of him who has violently carried off cattle, women, men, or other [animals]; neither by his son after him." Nárada: "A pledge, boundaries, a minor's estate; deposits, both specified and unknown; women; the property of the king, and that of Çrótriyas, are not lost to the owner's by another's possession of them." Manu :[2] "A milch-cow, a camel, a riding horse; [a bull, or other beast] which has been sent to be tamed for labour; and other things used with friendly assent, are not lost, [by length of time], to the owner." *Sent to be tamed*, what is given in charge to another for the sake of taming.

Possession invalid.

XXXI.

SECTION III.

On Evidence by Witnesses (Sákshí.)

1. In the Todaránanda, Nárada says: "But in doubtful matters, when two men are disputing, strict attention must be paid to their witnesses, as to what was seen, heard, or understood."

Evidence by Witnesses.

2. Brhaspati states the distinctions of them: "Witnesses are declared to be of twelve sorts, written, caused to be written, concealed, or recollected ;[3] a member of the family, a messenger; a spontaneous witness[4] and one in answer; another man employed in the business; the king; his superintendant [adhyaksha;] and likewise the village." *Written*, entered by the plaintiff in a deed. *Caused to be written*, one entered [in the same] by the defendant at the plaintiff's request. *Concealed*, one made to hear behind a partition, or the like. *Recollected*, reminded from time to time of the business [to be proved]. *Spontaneous*, a witness coming to give evidence of his own accord. *One in answer*, speaking after other witnesses, upon hearing or being told [their evidence]. *Superintendent*, the chief judge: and this is meant to include the assessors and other [members of the Court], by reason of this text of Kátyáyana: "The secretary, chief judge, and assessors in succession,] are witnesses when the king presides in a cause."][5]

Their nature.

XXXII.

1—A somewhat similar text is found in Macnaghten, p. 424.

2—Chap. 8th, v. 146.

3—Bentham's Treatise on Evidence, page 26—57.

4—Ditto, ditto, page 89.—The term in Sanskrit signifies 'self-willed.'

5—The last hemistich is omitted in the text, and supplied here from Macnaghten, page 442.

3. The same author[1] says : "There shall be nine, seven, or five, [witnesses]; even four or three; or two may be taken, if they are both Çrotriyas; a single witness shall not be examined at any time." *Written* witnesses shall be two, as well as *concealed* one; three, four or five, shall be the number of those *caused to be written, spontaneous, reminded,* men of the family, and likewise, those called *in answer;* a messenger, and accountant, and likewise one employed in the business, may give evidence as a single witness, and the king, as well as the superintendant [and other officers of the Court."]

And number.

4. Yájñavalkya declares the admissibility even of the *written* witness and the rest, as a single witness, with mutual consent of both parties:[2] "By the consent of both parties, even one person, of virtuous knowledge, may be a witness." Vyása : "A witness, whose actions are pure, and who knows his duty [towards men], whose word is known, is admissible, even if the only witness, when it is necessary, in criminal cases." *Whose word is known,* often seen to be a speaker of truth. A single witness, if unconnected with the party, may be taken in cases of deposit and the like; for Kátyáyana says: "In a very secret deposit, even one single witness is declared admissible; as well as one witness, sent by the plaintiff in a case of things borrowed for use." *Borrowed,* ornaments or other jewellery, as ear-ornaments or the like, obtained for the sake of a wedding, or the like. The same author says one witness is also admissible in disputes about saleable articles: "They shall cause the article to be identified by the very man who finished it; that single witness is in such a dispute declared good evidence."

One witness when legal.

5. Vyása details their qualifications: "Persons religiously brought up, fathers of sons, purely descended, of a good family, veracious speakers; constantly performing their duties towards Gods and men, who have forsaken hate and envy; Çrotriyas, and those independent; learned men; persons stationary; and young men, may all be received as witnesses in case of debt or the like, by the wise."

Requisite qualifications.
XXXIII.

6. Nárada: "Among companies of artizans, men who are artizans shall be witnesses; and men of one tribe among those of the same; foreigners [outcasts] among those living outside, and women among women." Kátyáyana tells us who are men of one tribe [varga]: "Bhṛgu calls them men of one tribe, who are wearers of [false] tokens,[3] members of joint companies and of separate trades;[4] and

1—Probably Bṛhaspati, elucidating his own preceding text.

2—Macnaghten, page 447-449.

3—Lingí The context would induce us to apply it to the Lingáit. Vánis of the Daknan, who do actually wear a linga upon their arms as a distinctive mark.

4—Çreni and Púgá, for which see chap. 1st, sec. 1st, para. 10; 2d para. 1st—and chap. 12th, para. 3.

other merchants; also communities [Samúhastha] and other such men. The Nayakas of the several communities, whether of slaves, bards, wrestlers, or the drivers of elephants, horses, and carriages, are termed in law, Vargi." Yájñavalkya makes this mention of those of another caste:[1] "There should [in general] be three witnesses; persons who take delight in acts ordained in the Veda and in sacred law-books; and properly, they should be of the same sex and class with the party for whom they give evidence: but, if that cannot be, those of all classes may be examined."

Inadmissible witnesses.

7. The same author tells us who are excluded:[2] "A woman, a minor, an old man, a gamester, an intoxicated person, a madman, an infamous person, a juggler, an infidel, a forger, one deformed, one degraded from caste, a friend, one interested in the subject-matter, a partner, an enemy, a robber, a public offender, one convicted, an out-caste, and others, are incompetent witnesses." An *out-caste*, turned out by his own family. From the phrase, slaves *and others*, and the like must be understood. Bṛhaspati; "The evidence of a mother's father, and of a father's brother; of a wife's brother, and her maternal uncle; of a brother and his son; a friend, and a daughter's husband, is inadmissible in all disputes." Nárada:[3] "He, who not having been pointed out, comes and offers his evidence, is technically called a self-spoken man; he is not proper to be examined in evidence." Kátyáyana.[4] "Of witnesses recorded, and summoned by a litigant party, should one utter a contradiction, all will be rendered incompetent by that contradiction."

XXXIV.

Exceptions.

8. Of these also, Nárada declares in some cases the admissibility: "Slaves, degraded persons, and the rest, who are declared not to be [legal] witnesses, may also be admitted to give evidence, with due consideration of the weight of the matter in dispute." In the absence, says Manu:[5] "On failure [of witnesses duly qualified] evidence may [in such cases] be given by a woman, by a child, or by an aged man; by a pupil, by a kinsman, by a slave, or by a hired servant." Yájñavalkya:[6] "All persons may be witnesses in cases of adultery, theft, affray, and criminal business." Here, the separate mention of adultery, and the rest, in treating of actions of a criminal nature, has reference to the act of adultery or other [offence] in a secret way. Uçanas: "A slave, a blind man, one deaf, a woman, a minor, an old man, and the like, these persons also, if unconnected with the party, are admitted as witnesses, in criminal cases." *Unconnected*, not partial to either side.

1—Macnaghten, p. 442, Dig. 1st, 22.

2—Macnaghten, p. 446; Reports, 1st, 105-6-7.

3—Macnaghten, p. 446.

4—Macnaghten, p. 446.

5—Chap. 8th, v. 70. Reports, 1st, 105.

6—Macnaghten, p. 447.

Objections to receipt of evidence.

XXXV.

and proceedings thereon.

9. Bṛhaspati: "Witnesses acquainted with the matter, if there be any objections to them, they shall declare faulty; if the opponent charge as faulty [witnesses] who have no fault, he is worthy of a fine equal to it." The *opponent* [vádí] here means the defendant. *Equal to it*, an amount equal to what forms the ground of suit. Vyása: "Objections to witnesses are to be recited in court by the defendant; and they shall cause to be read out [to the witnesses] all the objections, when taken down in writing, and they shall give a reply to them." The meaning is, 'having clearly set before the witnesses the disqualifications alleged, as taken down in writing [from the defendant], they shall be made by the Court to state their explanations on the subject.' The same author says: "But on their admission [of the disqualifications], their evidence is never at any time fit to be received. But [if the case is] otherwise, the objections must be substantiated, with evidence, by the defendant."[1] "A person failing to establish an exception openly made against witnesses, should be punished; but if proved, the witnesses are to be dismissed, and deprived of the privilege of giving evidence." "Moreover, they shall undergo humiliation in the mode consonant to the Çástra: provided the plaintiff's sole reliance has been placed on the veracity of the witnesses." *If otherwise*, in case of their not confessing. *Substantiated*, made to acknowledge it. *With evidence*, by proof. The meaning is, that the charge shall be substantiated as clearly as possible.

Further explanations.

10. However, this text: "Objections to witnesses, apparent to the members of the court, or those universally admitted by the world to be true, are to be taken for granted, and not to be considered as requiring proof with a view to obviate that particular disqualification," has reference to witnesses publicly known to be in the confidence of the party.[2] In case of these disqualifications being unknown to the defendant, the same author says: "Those objections in proof [which are known] are to be made manifest by assessors in the time [of trial], be declared by the defendant; but concealed faults are to be pointing them out from the Çástra."

XXXVI.

Time for stating them.

11. This is the meaning, 'That concealed [objections] are to be declared, by quoting the Çástra upon them, at [any], time before the witnesses speak.' But they are not to be mentioned afterwards, for thus says Bṛhaspati: For any legal objections to written deeds, as well as to witnesses, which may exist, are to be declared in the time of trial; if mentioned afterwards, it shall not vitiate them as proof." *Mentioned*, proper

1—Macnaghten, p. 448.

2—Bentham on Evidence, page 46, applies here, in as far as the Members of the Court are not bound to shut their eyes to their own knowledge.

to be spoken; that is, 'proper to be stated in the commencement, according to the rule of grammar, "The affix [kta] implies an act begun and not past[1] and likewise an agent." Here this affix denotes the agent. Here, their punishment is stated by Kátyáyana: "He who, when the matter has been spoken, shall charge, as disqualified, witnesses before unsullied, and shall not state any cause for it, shall receive the lowest amercement." In case of the inability of the witnesses to explain away the objections urged against them, the plaintiff must do it: thus says Brhaspati: "The action of him whose documents or witnesses in a cause are alleged to be faulty, shall not be favorably adjudged, so long as he fails to clear them from the charge." Then, the documents, &c.

Subornation of perjury.

12. Kátyáyana declares the punishment for suborning false witnesses: "He, by whom false witnesses have been set up, through wicked desire of gaining any object, shall have the whole of his property confiscated, and then have his object made null." *Object made null*, go without the object of his suit.

False witnesses.

XXXVII.

13. Nárada declares the means of discovering false witnesses: "He who, by reason of his wicked state, caused by his own crimes, appears as if irresolute, goes from place to place, or runs after every person; who suddenly coughs much, and likewise every now and then draws his breath; who scratches, as if writing, with his feet; and who shakes his hand and clothes; whose face changes colour, and whose forehead sweats; whose lips become dry, who looks above and about him, and who speaks much, in a hurried manner, without restraint, unquestioned, such an one is to be known for a false witness: they shall punish one so sinning severely."

Examination of witnesses.

14. Kátyáyana and Manu[2] state the mode of examining witnesses: "In the forenoon, let the Judge, being purified, severally call on the twice-born, being purified also, to declare the truth in the presence of [some image, a symbol of] the divinity, and of Bráhmans, while the witnesses turn their faces either to the North or to the East." Manu:[3] "The witnesses being assembled in the middle of the Court-room, in the presence of the plaintiff and the defendant, let the Judge examine them, after having addressed them [all together,] in the following manner: 'What ye know to have been transacted in the matter before us, between the parties reciprocally, declare at large, and with truth; for your evidence in this cause is required.'"

1—Cole. Mit. 306. note. 2—Chap. 8th, v. 87. Macnaghten, p. 447.
3—Chap. 8th, v. 79-80. Macnaghten, 447. Strange, 1st, 310.

Production of the disputed article.

15. In disputes about kine, horses, and the like, the same author requires the production of the thing in dispute : " In the presence of the plaintiff and defendant, and in company with the thing to be proved, they shall cause them to state their evidence openly ; not at any time without having it before their eyes. Evidence may be given upon the disputed article alone, without either attending, in some cases ; this is the law in causes respecting quadrupeds, and likewise in those for bipeds, and fixed property." " In disputes about articles of weight, number, or measure,[1] they may also in its absence, cause the witnesses to state their evidence. In all matters capable of proof, evidence is requisite, but not otherwise." *Without either, in some cases ;* that is, without both the plaintiff and defendant, in presence of the disputed article. *In some cases,* meaning, in cases of quadrupeds and the rest. *Articles of weight,* gold, or the like, proper to be weighed. *Of number,* coin or the like, fit to be counted. *Of measure,* things proper to be measured, as rice, wheat, and the like. *In absence,* in default of the production of the thing to be proved. *In matters capable of proof,* in disputes at law.

XXXVIII.

Further rules for examination of witnesses.

16. In cases involving murder, the same author says, the depositions of witnesses are to be taken in presence of Siva : " In charges of killing living creatures, they shall deliver their evidence in presence of Çiva ; in default of the marks, they shall cause them to deliver it ; not otherwise." *It,* the deposition of the witnesses, to be given in default of marks of the murder. *Otherwise,* in existence of marks of the murder. The same author says : " Procrastination must not be used by the king in the examination of witnesses ; it becomes a great fault, by reason of the time [lost], and bears the quality of denial of justice." Nárada : " Having called the witnesses, and bound them down firmly by an oath, he shall examine them separately, all of them well versed in the established rules of life, and acquainted with the matter in dispute." Vasishṭha : " That act, which was seen by all of them together, is to be told by them even in the same manner [together] ; but that which was [seen] by them separate, shall be related separately by each. But where the acts known by the witnesses, were done at different times, each shall then be made to depose [separately] ; this rule is declared."

XXXIX.

1—The gloss enumerating only articles of quantity, it might be doubtful, did common sense allow such a supposition, whether articles measured by length were not excluded, but the latitude always claimed for that frequently occurring phrase, 'the like,' would include measures of length as well as quantity. *A'di,* et cætera, the like, the rest. The same is not unknown to the English law. Burn's Justice, Preface to 1st edition. "Also, upon another account, he hath sometimes made use of more words than otherwise he would have done, namely, to avoid the frequent repetition of the term, &c. which is a *vague expression* and apt to create uneasiness in the reader's mind, for that he cannot be satisfied from thence how much or how little is intended to be understood."

17. Manu :[1] "Let the Judge cause a Bráhman to swear by his veracity; a Kshatriya, by his horse, or elephant, and his weapons; a Vaiçya, by his kine, grain and gold; a mechanic, or servile man [Çúdra] by [imprecating on his own head, if he speaks falsely,] all possible crimes." "Bráhmans who tend herds of cattle, who trade, who practise mechanical arts, who profess dancing and singing, who are hired servants, or usurers, let the Judge exhort and examine as if they were Çúdras." "They who are fallen from their proper sphere of life; they who live by the bodies of others; they who long for the privileges of twice-born men, are to be examined as if they were Çúdras." The meaning is, that he should exhort them thus: 'By speaking contrary [to truth], your honourable character will be lost,' or the like.

Tendering of Oaths.

18. The test for depositions of witnesses is declared: "The king shall declare the matter in dispute clearly proved, if the evidence be nothing wanting as to the place, [or country], the time, age, thing in dispute itself, the name, caste, [family or kind], its weight [or measure]." Yájñavalkya states this [rule for] decision on the counter-statements of witnesses :[2] "If the evidence be discordant, the testimony of the greater number shall prevail; if the witnesses be equal in number, the testimony of the virtuous; if virtuous men depose two inconsistent facts, the testimony of those who are most eminent by their honesty."

Test of evidence.

19. The same author declares the punishment for not deposing after having agreed to give evidence: "If a man does not give his evidence, he shall be made by the king to pay the whole debt, with a tenth imposed besides, before the lapse of forty-six days." *The whole*, including interest. *A tenth*, together with a tenth share. This tenth share is to be taken [from the witness] by the king; and the debt, with its interest, is to be taken [from the same] by the creditor. This is on the authority of the Mitákshará. The punishment for refusal to give evidence, by a witness knowing [anything of the matter] is thus stated by the same author :[3] "He who, having been called on for his testimony, being influenced by his passions, conceals it from others, should be made to pay eight fold, and if a Bráhman, should suffer expulsion." *Be made to pay*, eight times as much as the fine laid down for a defeat; if he be a Bráhman, and unable to pay this fine, he is to be banished. Kshatriyas and the other [lower castes] are to be made to work at their own proper profession, according to the Mitákshará.

Punishment for refusing to give evidence.

XI.

20. Manu :[4] "The witness who has given evidence, and to whom within seven days after, [a misfortune] happens, [from] disease, fire, or the death of a kinsman, shall

Further test.

1—Chap. 8th, v. 113, 102; see post, Chap. 3, para. 3.

2—Cole. Digest, 1st, 233, note. Macnaghten, p. 449.

3—Macnaghten, p. 452.

4—Chap. 8th, v. 108.

be condemned to pay the debt, and a fine." Yájñavalkya: "Even when evidence has been delivered by witnesses, if other more excellent witnesses, or double the number of the first, depose contrary to them, the first witnesses shall be declared false."

Limit to receipt of evidence.

21. Nárada: "But after the cause has been decided, all proof, whether by documents or witnesses, shall be useless, provided it were not made known before."

Perjury when lawful.

22. Yájñavalkya declares a command for witnesses giving untrue statements in some cases, and the penance for so doing:[1] "Where men of the four great classes would be liable to suffer capital punishment, there indeed the witness may speak untruths: A Sárasvata oblation must be presented by regenerate men, for the sake of purification from the offence." Vishṇu declares the penance for Çúdras: "And a Çúdra shall give one day's fodder for ten kine." *One day's*, that is, what will be fully sufficient for their food during one whole day. Thus far of witnesses.

1—Macnaghten, p. 454 q. v.

CHAPTER III.

On Ordeal, (Divya).

1. IT has been thought useless and unnecessary to translate the Chapter on Ordeals, of which a sufficiently copious account is given in Sir F. Macnaghten's work on Hindú Law, page 460 et seq., to which, as well as to a very interesting paper in the first volume of the Asiatic Researches, page 389, on the same subject, the reader is referred. But as one mode of Ordeal is by oath, the section relating to it is here added, for the satisfaction of those who consider an oath necessary duly to appreciate testimony; though it will be observed, this oath of Ordeal evidently refers to the litigating parties, and not to witnesses.

Nine sorts of it.

2. Nine modes of Ordeal having been discussed in order, [as enumerated in the following text of Bṛhaspati:[1] "Ordeal by the Scales, by Fire, and by Water, [are the three first]; that by Poison [the fourth], and by consecrated Water, [Kosha] is the fifth; that by Rice is stated as the sixth, that by Burning Oil the seventh, that by Iron is named as the eighth, and that by Lot is recorded as the ninth," * * * * * * * * * * * * * * * * we come to

1—Ellis's Lectures, part the third. "Oaths and Ordeals; the several kinds of expurgatory ordeals [namely, according to Yájñavalkya and others, agni-divyam, by fire; Jala-divyam, by water; Visha-divyam, by poison; Kosha-divyam, by holy water; and, according to Nárada and others, Tandula-divyam, by chewing dry rice; Tapta másha-divyam, by taking gold from clarified butter while hot; Phála-divyam, by the hot ploughshare; Dharmaja-divyam, by taking one of two images, representing justice and injustice, from a covered pot]; occasions on which the ordeals may be lawfully performed; the penalty incurred by the party demanding the ordeal, in case his adversary succeeds in performing it; the seasons of the year in which, and the persons, considered with respect to caste, age, sex, &c. by whom, the several ordeals may be legally performed; nature of the ordeals to be performed in suits for property, determined by the value of the thing in dispute; places where the ordeals can be legally performed; the punishment to be inflicted for failure in an ordeal; ceremonies common to all ordeals, as upavásanam, fasting, &c.; particulars to be observed in the performance of the several ordeals; and first, in the ordeal of the balance: materials of which the scales are to be made; mode in which this ordeal is to be performed; the same with respect to the ordeal by fire, water, poison, holy water, rice, gold, the ploughshare, and images; different kinds of *imprecatory oaths, and occasions on which they are lawful.*"

Ordeal by oath. LXXXI.

3. Oaths [Çapáthás,] Manu :[1] "Let the Judge cause a Bráhman to swear by his veracity : a Kshatriya, by his horse, or elephant, and his weapons ; a Vaiçya, by his kine, grain, and gold ; a mechanic, or servile man, [Çúdra] by [imprecating on his own head, if he speak falsely,] all possible crimes." And Bṛhaspati says, "A man's honour, vehicles, weapons, kine, seed, and gold ; [imprecation] by the feet of the Gods and of Bráhmans, and by the heads of his children or wife ; all these oaths are declared at all times attainable in small disputes. In criminal accusations, ordeals are declared purificatory."

In what cases permitted.

The result how determined.

4. Yájñavalkya : "He, upon whom no frightful calamity happens, whether by the act of God or the King, within the term of fourteen days, shall be held pure ; there is no doubt." *Frightful*, great. One of small moment, according to the Mitákshará, [does not affect him], because of the non-inviolability of mortal bodies. Kátyáyana also : "He to whom a frightful calamity does not happen, whether by the act of God or the King, within fourteen days, is to be known as one pure by his oath." *Calamity*, accident. *Frightful*, causing great anguish. According to Váchaspati Misra and Smártta Bhattácharya, a small accident does not affect him, because it is the lot of humanity. Again Kátyáyana says : "Now in case of contradiction [of the oath] by ten Gods, within twice seven days, the debtor shall be made, by every possible means, to pay the money sued for, and a fine as well." "When to him alone, and not to all, there happens disease, fire, or the death of a near relation, he shall be made to pay the debt, and a fine." "Fever, dysentery, boils, great pains in the deep-seated bones, diseases of the eyes, or of the throat, or madness, and pains in the head, with loss of use of the hand, are the heaven-directed diseased of mankind." *In contradiction by the Gods*, death of a relation or the like, happening to him alone. By this, [is intended], the exclusion of epidemic diseases and the like. Here, by the phrase *to him alone*, distinguishing the before mentioned debtor, is meant the mark of disease or the other calamity accruing to the debtor alone, not to his sons or other [relatives] : and those, only great, not slight ones, as has been already mentioned. By this reasoning, it means only a mark appearing against the defendant himself, as some uncommon disease, or the like, according to Váchaspati Misra. For this very reason, the death of a near relation is specified, but not their diseases or the like.

LXXXII.

1—Chap. 8th, v. 113, Ante. Chap. 2, Sec. 3, para. 17.

CHAPTER IV.

ON INHERITANCE, [DA'YA-VIBHA'GA].

SECTION I.

Of Property or Ownership (Svatva).

Generation of property.

LXXXIII.

1. NOW we come to speak of such ownership, as is necessary for deciding regarding heritable property. The distinctions as to its power and operation, are produced by purchase, acceptance, &c. The reason of this is, that the causes of purchases, &c. arise from worldly transactions alone, not from the Çástra; for proprietary rights are understood even by those not acquainted with that sacred code, in deducing it from which the subject is needlessly enlarged. Bhavanátha is of this opinion in his Naya Viveka.

Text of Gautama explained.

2. As for the text of Gautama:[1] "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Bráhman an additional mode; conquest for a Kshatriya; gain for a Vaiçya or Çúdra," it is by way of repetition in matters established in the world. For people admit inheritance [to be] in that, which becomes one's own by the mere loss of the owner's property therein. The word *there* is used to include purchase, seizure, [or acceptance] and the rest. Here even, in such like loss, the word inheritance, has force; by reason of its joint application [in the text] to purchase and the other means of ownership. And the same may be proved by the argument, that 'without admitting a cause [there can be no effect].'

Argument, that ownership is generated by birth, not by partition.

LXXXIV.

3. According to Dhāreçvara A'chárya: 'The ownership of sons and the rest, in the wealth of the father, is not generated previously during his life, but is produced by partition.' And the author of the Smrti Samgraha says the same. But it is not so; for, from the plain sense of this text: "Even by birth, ownership in wealth is obtained," and other similar ones, it is evident, that, ownership in the

1—Cole, Mit. 244-250. Reports vol. 2d, 312, 514.

father's wealth depending on the filial relation, it is generated even by the production of a son. And [the same results] from this text of Yájñavalkya :[1] "For the ownership of father and son is the same, in land which was acquired by the grandfather, or in a corody, or in chattels which belonged to him." 'And this does not mean, that the reason of the acquisition of ownership is found in the grandfather's death, and not in the production of a son,' for [if it did], such ownership would be wanting, in case no grandson were to be born to him up to the time of his death. In this way therefore, either the word *grandfather* is of no use [in the argument]; or it follows á fortiori [prasakteh] that there is no equal ownership in [property] acquired by the great-grandfather, and other [more remote ancestors]. And the argument of 'cause and effect' might here be repeated.

Text of Devala

4. As for this text of Devala :[2] "When the father is deceased, let the sons divide the father's wealth ; for sons have not ownership, while the father is alive and free from defect ;" the first hemistich comprehends up to the time of partition, because it declares the [ascertainment or] instrument, or agents, of the [act or] ceremony ; but the last hemistich refers to their dependance, as declaring the same person's praises ; but it does not mean the absence of ownership. It is also made clear in this text of Çankha : "From this it results, that while the father lives, sons shall not divide the wealth : even if there should be afterwards an increase by [means of] them, still the sons are unfit, by reason of their dependance upon the wealth and religious offices of the father." Here, *dependance* is specified immediately, with a view more strongly to inculcate the foregoing prohibition. '*Even if by them subsequently*, [be made]' is the proper interpretation. *By them*, by the sons, subsequently to their birth. *Increase*, what is obtained by acceptance, or the like. The proposition is this : 'If in property accepted by sons or other [heirs], their dependance [is clear] from the [father's] undisputed ownership, how [can we doubt their dependance] in property acquired by the father.' And this dependance attaches to partition, supererogatory moral observances, industry, and the like. So also Hárita :[3] "While the father lives, sons are not independent in regard to the receipt and alienation of wealth, to the partition of it, or to censure." By the words *receipt* and *alienation*, supererogation is pointed out. *Censure*, according to Madana, means, reproving of the slaves and other [household servants].

and of Çankha

explained.

LXXXV.

1—Cole. Mit., 277-8.

2—Coleb. Jím. Vá. page. 9. Digest 2d, 522.

3—Colebrooke's Jímúta Váhana, 19.—Digest, 2d, 527. q. v. In all the translations of this text, as well as in some of the original versions of it, there is nothing about "partition." The word has crept in from a modern copy of the Mayúkhá procured at Benares, and used in preparing it for the press. It will be observed that there is a variation in the readings of the last part in all the books.

5. As for this text :[1] "The father is master of all gems, pearls and corals; but neither the father nor the grandfather, is so of the whole immoveable estate," it also means the father's independance, only in the wearing and other [use] of ear-rings, rings, [&c.], but not as far as gift or other [alienation]; neither is it with a view to the cessation of the cause of his ownership on the production of a son. This very meaning is made manifest also by [the text] noticing [only] gems, and such things as are not injured by use. Even so, this text :2 "Though immovables and bipeds have been acquired by the man himself, a gift or sale of them should not be made without convening all the sons," is only a prohibition against their gift, sale, or the like, not against the use of them.

Anonymous text, touching the power of the father and grandfather, explained.

6. Now the pre-existing undefined [joint] ownership of more than one brother or other [co-heir] is, by partition between each, defined and made apparent. On this point some one has said : "This [ownership] is produced different, as a separate portion, by the destruction of the former ownership contained in the common property." But, justly speaking, since prolixity arises in considering the production of, another ownership on the destruction of the former; therefore [separate] ownership, existing even originally from community [of interests], is discovered by partition, by the result furnishing separate substances or things.

Ownership is pre-existing, and merely defined by partition.

LXXXVI.

7. To return to the text :[3] *Acceptance is for a Bráhman an additional mode*; that is, according to some, 'What is obtained by acceptance, is the Bráhman's additional [mode of] increase.' With reference to inheritance, and the other [five modes common to all], this acceptance is, for a Bráhman alone, an additional mode. It results therefore, that *conquest* and the other [modes enumerated] are in like manner [additional] for Kshatriyas and the rest.

Resumption of the argument, of Gautama's text, as relates to Bráhmans.

8. In conquest also, where the property of the conquered consists in houses, lands, money, or the like, there alone [ownership] is acquired by the conqueror; but in the revenues[4] of the conquered, the conqueror possesses the same, but no property in them. Even so in the sixth [book of the Mímáṁsá] : "The whole earth must not be given away by the king of the world, neither

To Kshatriyas.

1—Cole. Mit. 254, where the word "sarvvasya" is translated "*of all* [other moveable property];" but the present version is made conformable to the interpretation of our author. Reports 2nd, 451.

2—In some works this text is assigned to Vyása. Here and in the Mitákshará, page 257, it is anonymous.

3—Of Gautama, para. 2.

4—The terms, 'kara grahita,' 'kara graha,' are used in the same sense in the inscription in As. Res. 9th, 419, note q. v.

a [whole] district [maṇḍala] by the ruler of that district." But the property in each village, house, or other [portion] of a whole country or a district of it, belongs solely to the owner of the soil [bhúmika] or other [proprietor]. The revenue only [may be taken] by the prince. Therefore, in gift, or other alienation of such lands as are here made mention of, a gift of the land is not brought about; we must only suppose a mere livelihood [given by the prince out of his revenues]. But in purchases from the owner of the soil, even ownership accrues in the [property transferred], whether houses, land, or other. Then indeed, the benefits of a gift of land also may be obtained from it [by buying land from the owners and then giving it away in charity.]

The king has no right to the soil, but merely to the revenue arising from it.

9. Gain, [Nirvishta] is that which is acquired by usury, agriculture, commerce, tending of animals; and [secondly] what is acquired by service. From the dictionaries, we find the synonymes of 'Gain' to be, 'Hire,' and 'Enjoyment.' Hire again, is defined to be Service. Enjoyment, is usury and the rest. Here, the first mentioned [are sources of gain] to the Váiçya class: The second [service] to the Çúdra class.

To Váiçyas and Çúdras.

LXXXVII.

10. Now, the reason of sale and other transfer of property, is to be deduced solely from worldly motives, [and not from law; with which proposition we set out.] And in like manner, popular practice is established in the ownership of calves and other [produce] of a man's own cow, or the like: but it would not be so, if it depended on such means only as the law furnishes [for deciding such a question], because we do not learn from the law the means of distinguishing the produce of one's own cow or the like.

Conclusion drawn.

11. Yet, [an opponent may say]: 'There may be ownership in daughters, sons, or other issue of a wife, in the same way as there is in the produce of one's own cow; [and], a case of necessity being assumed, [for instance,] by the rule: "In a viçvajit sacrifice a man gives the whole of his possessions," the gift of every thing being granted, the necessity thence arises for the gift of a daughter or son, and therefore your reasoning from the sixth book of the Mímáṁsá, [that they are not to be given], will be at variance with such rule.'

Opponent's argument.

12. [I answer] No; because there being no such property in a wife as there is in a cow or the like, there cannot be any property in the children produced from her: And in a worldly sense, the reason of ownership is determined, solely in the production of that which contains the principles of ownership. Neither can it be said, that property may also exist in wives, from acceptance [in marriage]; for then, by reason of the absence of property possessed

Refuted.

by Kshatriyas and the other [two classes in] their wives, from their want of the [right of] acceptance, there is also a want of it [property] in their issue.

Argument drawn from affiliation of an adopted son.

13. Therefore, since the text:[1] "This law is propounded by me in regard to sons equal by class," restricts the taking of an adopted son solely to one equal in class; and since with respect to Kshatriyas and the rest, acceptance of an adopted son is even secondary; then also with respect to Bráhmans, it is not the principal mode; because it is contrary to reason to have two contrary, but connected, explanations of performing one and the same rite.

Power of adoption not restricted to Bráhmans.

LXXXVIII.

14. Neither can it be said that a Bráhman alone is entitled to the rite of accepting a son, and that a Kshatriya is not entitled, since we know that the rite [of accepting a son] does pertain to them, from the following and other texts of Çaunaka and others[2]: "A daughter's son as well as a sister's son, are affiliated by Çúdras." Even so, in the marriage of a Bráhman with the daughter of a Kshatriya or other [lower class], by the Bráhmya rite, the secondary rank must be admitted, both for the gift and acceptance; otherwise they are principal. Thus two explanations [of the same rite] are [here again] opposed. As regards Kshatriyas, the admissiblility of all to Bráhmya nuptials and the rest is in no degree contrary [to texts.] Even so Miçra in the Tantra Ratna has said: 'The gift of sons and the rest is inferior [or secondary].'

A verbal objection, overruled.

15. Neither are we to suppose [absolute] property, merely because the laws of language [admit the expression], 'own wife, son, daughter; for in the same way as we say 'own father,' 'own mother,' and the like, the expression also arises in speaking of kindred. If so, the power of the word 'own,' might likewise affect the term kindred, for in dictionaries we find: "In the word *kindred*, the pronoun own [is feminine]; in *soul* [it is masculine]; in *kindred*, it is [common to] three [genders]; and in the expression peculiar wealth,[3] it is neuter."

Consistency preserved.

16. However, since in the sixth book of the Mímáṁsá, gift of a slave born in the family is mentioned, this point must be considered. Since property in the mother is wanting, from absence of the complete power of gift, acceptance, purchase, sale, and the like, then in the household-slave begotten on her, there is also an absence of the power, from the impropriety of it. This conclusion is conformable to the argument with which we set out.

1—Cole. Mit. 320. 2—See post, sec. 5th, para. 9.

3—In the Amara Koça, page 108, the expression is "Svostriyán dhane," signifying, "the pronoun is not feminine, in the word wealth," instead of 'Svannije dhane,' as here. Neither in the Trikándi, [page 76], nor in the Madini, [page 154], is the reading like the Mayúkhá; and in the Benares copy, it is according to the Amara Koça.

SECTION II.

Of Heritage, (Dáya.)

Definition of the Term.

LXXXIX.

1. Wealth not re-united, nor put back again into a common stock, and [still] admitting of partition, is Heritage. By *not re-united,* I mean to exclude wealth [never before joint, and now first] united for purposes of gain or the like, because the term 'partition of heritage,' does not apply to dividing of [wealth] thrown together by merchants. In like manner we must also exclude re-united property, in the sense in which that term will hereafter be defined.[1] Even as [we find] in the Smṛti Saṁgraha: "That which is received through the father, and that received through a mother, is described by the term Heritage: The partition of it is now related." And in the Nighantu, it is said: "The learned define heritage to be, wealth of a father, which admits of partition." The word *father* is merely put to denote relations in general, as a part for the whole.

It is of two kinds.

Obstructed.

And unobstructed.

2. This heritage is of two kinds, obstructed and unobstructed. When the life of the owner of the property, or that of his sons, or other [heirs], is interposed, that [property] is [termed] obstructed; for instance, the wealth of uncles, and the like. But where ownership accrues to sons, or other [next heirs], solely from affinity to the owner, without reference to other means of acquiring property, [the heritage] is then unobstructed, as, the wealth of a father. This is the definition of heritage.

SECTION III.

Of the Partition of Heritage.—(Dáya-Vibhága.)

Definition of the Term.

1. This Nárada declares:[2] "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise, 'partition of heritage.'" The word *sons* includes [by synecdoche] grandsons,

1—Post, section 9th.

2—Of the various readings of this text noticed by Mr. Colebrooke, in his note to Mit. page 243, where it will be found, the author adopts the following, 'pitryasya.' prakalpyate,' 'tadvivâda padam,' and 'yatra.'

and the rest. And in the same way, by *paternal* [is intended the estate of] the grandfather and the rest. But Madana[1] has the very words, 'of a father and the rest.' And this definition, of 'partition of heritage,' has been declared.

XC.

2. Even when there is a total failure of common property, a partition may also then be made, by the mere declaration, 'I am separate from thee." A partition may even be a mere mental distinction. This exposition clearly distinguishes the various qualities of this-[term].

It may take place without the existence of property.

SECTION IV.

The Periods of Partition.—(Vibhága-Kála.)

1. Manu :[2] "After the death of the father and mother, the brothers, being assembled, may divide among themselves the paternal [and maternal] estate; but they have no power over it, while their parents live [unless the father choose to distribute it]." By inserting the word *and* the consummation of [both their] deaths is not required. Even thus, in the Madana Ratna and Smṛti Saṁgraha: "A partition of the father's wealth may take place, even whilst the mother lives, for this reason, that without her husband, the mother does not from her independence also derive ownership. "A partition of the mother's wealth also may take place, in like manner while the father is alive, for, if there be issue, the lord [of the wife] is not lord of the wife's wealth."[3]

Partition of the paternal estate, may take place at three periods, viz. after the father's death.

2. This is opposed to a text of Bṛhaspati :[4] "On the demise of both parents, participation among brothers is allowed: and even while they are both living it is right, if the mother be past child-bearing." Nárada :[5] "Let sons regularly divide the wealth, when the father is dead : or when the mother is past child-bearing, and the sisters are married ;

Or before it, if the mother be past child-bearing.

1—The Madana Ratna, referred to for this reading, by Mr. Colebrooke, and formerly mentioned, page 1 note.

2—Chapter 9th, v. 104, Cole. Mit. 263. Jím. Vá. page 8, Digest 2d, 521.

3—See Section 10th on "Woman's property."

4—Cole. Jím. Vá. 23-36. Digest, 3d, 18-78.

5—Cole. Mit. 260.

or when the father's sensual passions are extinguished." *Sensual passions*, desire. *Extinguished*, averse. The expression, *and the sisters are married*, must be taken collectively with [the mother's] child-bearing, and extinction of [the father's] passions, after the simile of the crow's eye.[1]

Or, with the father's consent, at any time. XCI.

3. Gautama :[2] "After the demise of the father, let sons share his estate. Or, while he lives, and the mother be past child-bearing, if he desire partition." From this expression, *if he desire*, partition is declared legal also, before the mother is past child-bearing, by the father's wish alone.

Partition of ancestral property, may take place even against the father's consent.

4. Bṛhaspati declares partition in some cases without his wish : "The father and sons are equal sharers in houses, and lands, derived regularly from ancestors : but sons are not worthy [in their own right,] of a share in wealth acquired by the father himself, when the father is unwilling :" From which it results, that sons are worthy of a share in property, acquired by the grandfather or other [ancestor], even though the father do not wish it.

With exception of such as he had recovered by his own exertions.

Over which, as well as over his own acquisitions, the father has full dominion.

5. In the grandfather's property also, partition in some cases depends on the father's pleasure, say Manu[3] and Vishnu : "And if a father by his own efforts, recover [a debt or property unjustly detained] which could not be recovered before [by his father], he shall not, unless by his free will, put it into parcenary with his sons, since in fact it was acquired by himself." Bṛhaspati :[4] "Over the grandfather's property, which has been seized [by strangers], and is recovered by the father through his own ability, and over [any thing], gained by him through science, valour, or the like, the father's full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth ; but on failure of him, the sons are pronounced entitled to equal shares."

1—That bird being fabled [from its singular mode of peering,] to look two ways at once, Cole. Mit. 358 note.

2—Colebrooke, Mitákshará, 260, but I have here followed the translation given in Jímúta Váhana, page 24, as more conformable to the doctrine of the Mayúkhá, which allows only three periods of partition. The Mitákshará on the other hand asserts, four, and in support of this doctrine, divides this very text of Gautama into three portions.

3—Chap. 9th, verse 209. Cole. Jím. Vá. 28.—Mit. 270. Digest 3d, 33, and the note there.

4—Cole. Jím. Vá., 134, the reading of which, 'Bhogancheva,' is here followed, Digest, 3d, 32.

6. Nárada :[1] "A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate." Hárita :[2] "If the father be free from desire, old, perverted in mind, or long afflicted with disease, partition of his wealth [may be made]." *Free from desire*, according to the Madana Ratna, means, without desire of partition. *Perverted in mind*, following practices contrary to law. The sense is, 'that partition may be made, even against the will of [such a] father.'

Circumstances invalidating the father's power.

7. Hárita says, that when the father is incapable, partition takes place by the concurrence of the eldest son :[3] "But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases."[4] Çankha and Likhita :[5] "If the father be incapable, let the eldest son manage the affairs of the family ; or, with his consent, the next brother conversant with business." *The next*, the one born after him. Partition by the pleasure of one capable of the maintenance and other [care] of the family [is intended]. From this it results that if all be so [qualified], it is [immaterial or] undetermined.

XCII.

The eldest son, in that case, manages the estate and the distribution of it ; or the next after him, with his consent.

8. Yájñavalkya :[6] "When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he choose], all may be equal sharers." A voluntary partition alone [is denoted] by the last hemistich ; since the dependance of the will in the two cases mentioned, has been above declared, from the impropriety of independance ; [and further] from the inconsistency [which would result in such construction] of the text : [For then he might give] to one a lákh [of rupees] ; to another a single kaurí ; to a third, nothing at all ; which would be no [fair] exposition [of the law]. A distinction in the share of the eldest, is noticed by Manu :[7] "The portion deducted for the eldest, is a twentieth part [of the heritage], with the best of all the chattels ; for the middlemost, half of that, [or a fortieth] ; for the youngest, a quarter of it, [or an eightieth] :" But, if there be no deduc-

On voluntary partition by the father, shares defined.

Partition by deduction as defined by Manu.

1—Cole. Jím. Vá. 52.—Mit. 263. Digest 2d, 541.

2—This text is found, but with a different reading, in Cole. Jím. Vá., page 19, to which, with the note there, the reader is referred.

3—Cole. Jím. Vá. 19. Digest, 2d, 527.

4—The first hemistich of the stanza of which this is the sequel, occurred before at sec. 1st, para. 4.

5—Cole. Jím. Vá. 19. Digest 2d, 533.

6—Cole. Mit. 258. Jím. Vá. 51. Digest 2d, 539.

7—Chap. 9th, vs. 112-116-117. Digest 2d, 548-52.

tion, the shares must be distributed in this manner : Let the eldest have a double share, and the next born, a share and a half, [if they clearly surpass the rest in virtue and learning ;] the younger sons must have each a share : [if all be equal in good qualities, they must all take share and share alike."]

XCIII.

Primogeniture in case of twins.

9. Between twins, the birthright of that one first born is thus declared by Manu :[1] "The right of invoking Indra by the texts, called Svabráhmanyá, depends on actual priority of birth ; and of twins also, [if any such be conceived] among [different] wives, the eldest is he, who was first actually born."[2] : "Among twins, to him whose face [kinsmen] first see after his birth, belong [the privileges of] male offspring, [the right of performing obsequies] for his father, and [the honours of] primogeniture."

10. However, in the Pinda Siddhi and other medical books, the right of primogeniture is awarded to the last born [of twins]. This is opposed by the above [texts] in the matter at issue, because it has no foundation in the sacred writings ; like as : "Purification ensues after a month [to Çúdras."] However, the right of primogeniture of the last born is declared in the Bhágvata,[3] in this text and the like : "When a double fœtus is conceived, the last conception is that first brought into the world." [But] this doctrine is also opposed to the above texts [of Manu and Devala], whilst in the Puránas, many practices are disclosed, contrary to the written law. According to some, the question ought to be decided by the customs of the country. But what I stated at first, [in favour of the first born], is the proper doctrine.

Partition by deduction, illegal in modern times.

11. And this partition by deduction, is not respected in the Kali [or present] age, for it is one of the things [expressly] set aside in the present age, as has been already proved by me in my Samaya Mayúkhá.

The father, in partition with an only son, takes a double share.

12. Nárada allows the father a double share :[4] "Let the father, making a partition, reserve two shares for himself." This text relates to an only son. For in the Madana Ratna is this of Çankha and Likhita :[5] "If there be one son, let [the father] himself reserve two shares, and

1—Chap. 9th, v. 126. Digest 2d, 577.

2—This following text is found in the Digest 2d, 578, attributed to Devala, and not Manu.

3—In the third Skanda, treating of the birth of Hiranyakasipu, and Hiranyaksha twins, Daityas, produced by Díti, one of the wives of Kasyapa Rishi ; the first hemistich of the text is omitted by our author, probably from its extreme grossness.

4—Cole. Mit.; 278, Jím. Vá. 35-41. Digest 3rd, 43.

5.—Jím. Vá. 44 Digest 2d, 555, where the same gloss is mentioned nearly in the words of our author, though it is not found in the Madana Párijáta, which is probably the one alluded to here.

the best of the slaves and cattle." The word *one* relates to the most excellent. By the author of the Amara [Kosha], 'chief,' 'other,' 'only,' are declared the synonymes of *one*. All which, according to the Párijáta, denote a son well qualified.

XCIV.

13. Brhaspati, however, declares the right to only an equal share with his sons, even if there be only one, in property acquired by the grandfather:[1] "In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and son is ordained." Yájñavalkya:[2] "For the ownership of father and son is the same, in land which was acquired by the grandfather, or in a corody, or in chattels [which belonged to him]." Kátyáyana: "When the father and the sons even, take all that, which has been made upon the common wealth, in equal shares, it is called a legal partition."

The only son has even a right to half the ancestral property.

And no other division of ancestral property is legal.

14. As for this text of Yájñavalkya:[3] "A legal distribution, made by the father, among sons separated with greater or less shares, is pronounced valid;" according to Madana, Vijñáneçvara[4] and others, it means, 'If the [distribution], made by the father be legal, it cannot be set aside. This text again, of Nárada:[5] "For such as have been separated by the father with equal, greater, or less, allotments of wealth, that is a lawful distribution: for the father is lord of all," relates to the former ages.

Two texts apparently to the contrary, explained away.

15. In a case of equal partition between a father and his sons, a share belongs also to the wife; says Yájñavalkya:[6] "If he make the allotments equal, his wives, to whom no separate property had been given by the husband or the father-in-law, must be rendered partakers of like portions." If any had been given, they are only to get half, for he adds:[7] "Or if any had been given, let him assign the half." *The half*; meaning, so much as, with what had been before given as separate property [strídhana], will make it equal to a son's share. But if her property be [already] more than such share, no share [belongs to her.]

In equal partition between a father and his sons, the mother gets a share.

XCV.

To be made by additions to her private property previously received.

1—Jım. Vá. 42. Digest 3d, 31.

2—Cole. Mit. 277-8 : Jím. Vá. 25 : Digest 3d. 31. Ante sec. 1st, para. 3.

3—4—Cole. Mit. 262, Jím. Vá. 50. Digest 2d, 548.

5—Digest 2d, 547. Jím. Vá. 50

6—Cole. Mit. 261. Jím. Vá. 63 : Digest 3d, 11, Reports 1st, 31.

7—Cole. Mit. 261-475

Resignation of a share permitted, under certain forms to prevent future claims.

16. The same author treats of a want of wish to participate, in the case of a son able to earn, and not desiring a share :[1] "The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving him some trifle." According to the Mitákshará it means that: 'Any thing whatever may be given, for the sake of preventing the desire being entertained by his sons, of receiving [a share of] the heritage.'

Partition after the father's death must be equal.

17. An equal partition, after the death of the father, is declared in another smṛti :[2] "Let sons divide equally both the effects and the debts, after [the demise of] both parents." Hárita :[3] "When the father is dead, the partition of the inheritance should be made equally."

In this case the mother takes an equal share with the sons.

18. Yájñavalkya :[4] "Of heirs dividing after the death of the father, let the mother also take an equal share." Vishṇu :[5] "Mothers receive allotments according to the shares of sons." In another smṛti [it is said :] "A mother, if she be dowerless, shall in a partition by sons, take an equal share." The meaning is, that if she have dower,[6] she shall take only as much as, with that dower, will make her an equal sharer with her sons. But no share [belongs to her], if her property be more than such share.

As do the step mothers, and paternal grandmothers.

XCVI.

19. Vyása[7] declares the [right to] share, even of a stepmother, and the paternal grandmother: "Even childless wives of the father are pronounced equal sharers; and so are all the paternal grandmothers: they are declared equal to mothers." From this [word] *all*, the step-grandmothers also are to be included.

Partitions among sons of different brothers, is according to their fathers.

20. Yájñavalkaya declares the mode of partition among the sons of different brothers :[8] "Among grandsons by different fathers, the allotment of shares is according to the fathers." It means, that if there be one son of one, two sons of a second, three of a third [or the like,] their shares will be solely according to the number of the fathers, and not in the number of the sharers themselves.

1—Cole. Mit. 262. Jím. Vá. 62, Digest 3d, 65. Reports 2d, 8-665. The subsequent quotation, as of Vijñaneçvara's comment on this text, seems imperfect. Cole. on Obligations, page 25. but with regard to debts, see post, Chap. 5th, sec. 4th.

2—Yájñavalkya Mit. 263. Jím. Vá. 55. Digest 3d, 78, Cole. on Oblig. page 138.

3—Jím Vá. page 61, where the word 'father' is omitted.

4—Cole. Mit. 285: Reports 2d, 454.

5—Jím. Vá. 64. Digest 3d, 15.

6—Dhana, wealth, taken as before in that sense, of separate property, para. 15.

7—Jím. Vá. 64, Digest 3d, 12. Reports 2d, 452.

8—Cole. Mit. 276. Jím. Vá. 60, Digest 3d, 6.

21. Kátyáyana:[1] "Should a younger son die before partition, his share shall be allotted [by the elder brother] to his son, provided he had received no fortune from his grandfather." "That son's son shall receive his father's share from his uncle, or from his [uncle's] son; and the same [proportionate] share shall be allotted to all the brothers according to law." Or [if that grandson be also dead] his son takes the share; beyond him succession stops." The *younger son* [anuja] denotes also that the eldest [is bound to portion off his brother's son]. *Stops* at the great grandson.

Brother's sons also share with their uncles.

Or even their sons' sons, but no farther.

22. We must thus understand it: 'The son of the great grandson, or the rest will not, on the death of the father[2] [grandfather, and great grandfather, without interval after the death of the great-great-] grandfather, obtain his wealth, being of another [line], so long as his son, or other [heirs] are alive. In default of son, grandson, [and great grandson] in the general [family] only, he also will take [the succession].'

Explanation of the above restriction.

23. And this does not refer to an undivided family, but to a re-united one. For it is said by Devala:[3] "Partition of heritage among undivided parceners, and a second partition among divided relatives living together [after re-union], shall extend to the fourth in descent: this is a settled rule." And[4] "Be it debt, or a written contract; or a house, or arable land, descended from his grandfather, he shall take his due share of it, when he comes, even though he had been very long in a foreign country." "If a man leave the common family and reside in another province, his share must undoubtedly be given to his male descendants when they appear." It means: 'between the great-great-grandfather, and his sons, separated when in a state of union, and [afterwards] re-united.'

Referring it to a re-united family only.

XCVII.

24. This refers to those fixed in the same district; because, where they reside in different districts, it will descend even to the fifth, as is declared by Brhaspati, in treating of residence in other lands:[5] "Be he the third person, or the fifth, or even in the seventh, [that is, in the second, or fourth, or even in the sixth degree], he shall receive the share that gradually descends to him, on full proof of his birth and family-name."

Removal of the limitation in case of residence abroad.

1—Digest 3d, 7. Both the readings noted there are thrown out by the author, who reads "anuja," instead of "nije."

2—This is an apparent interpolation of the words following between the brackets, in italics, as they are found only in the Benares copy.

3—Digest 3d, 10.

4—Digest 3d, 441, Jím. Vá. 140: in both the text is assigned to Brhaspati.

5—Digest 3d, 441, Jím. Vá. 140.

Partition is according to the mothers, in case their sons are of equal number.

25. Bṛhaspati[1] declares a partition in some case according to the mothers: "If there be many [sons] sprung from one [father], alike in number, and in class, but born of rival mothers, partition must be made by them according to law, by the allotment of shares to the mothers." Vyása:[2] If there be many sons of one man, by different mothers, but equal in number, and like by class, a distribution among the mothers is approved."

If not, then according to the number of the sons themselves.

26. Bṛhaspati[2] gives this opposite example: "Among brothers, who are equal in class, but vary in regard to the number [of sons produced by each mother], the shares of the heritage are allotted to the males [not to their mothers]."

Partition among sons of different classes.

XCVIII.

27. Yájñavalkya[3] states a partition among sons of different classes: The sons of a Bráhman, in the several tribes, have four shares, or three, or two, or one; the children of a Kshatriya have three portions, or two, or one; and those of a Vaiçya take two parts, or one.' *The sons of a Bráhman*, that is, borne to him by a Bráhmaṇí, a Kshatriya, a Vaiçya, and a Çúdra. Those of a Kshatriya, those by a Kshatriya, a Vaiçya, and a Çúdra. Those of a Vaiçya, those borne to him by a Vaiçya and a Çúdra.

Land is confined to the son borne by the wife of equal class alone.

28. Bṛhaspati:[4] "Land, obtained by acceptance of donation, must not be given to the sons of a Kshatriya, or other wife of inferior tribe: even though his father give it him, the son of the Bráhmaṇí may resume it when his father is dead." Devala:[5] "The son begotten on a Çúdrí woman by any man of a twice-born class, is not entitled to a share of land: but one begotten on her, being of equal class, shall take all the property [whether land or chattels]: thus is the law settled." *Of land*, acquired by purchase, and the other modes also. Yet he does obtain a share of the [moveable] wealth.

Illegitimate sons do not inherit even moveable wealth.

29. But the son by a Çúdra woman, not legally married, does not obtain a share, even of the moveable property. And Manu:[6] "The son of a Bráhman, a Kshatriya, or a Vaiçya, by a woman of the servile class, shall inherit no part of the estate [unless he be virtuous; nor jointly with other sons, unless his mother was lawfully married:] whatever his father may give him, let that be his own."

1—Jim. Vá. 57, Digest 2d, 575. 5—Jim. Vá. 57.

2—Digest 2d, 576. 3—Cole. Mit. 201. Digest 3d, 114.

4—Cole. Mit. 292. Jim. Vá. 147, Digest 3d, 130.

5—This is cited in other books as a text of Bṛhaspati: Jim. Vá. 148, Mit. 292, Digest 3d, 133.

6—Chap. 9th, 155, Mit. 293, Jim. Vá. 149, Digest 3d, 136.

30. Bṛhaspati declares this distinction after the father's death :[1] "The virtuous and obedient son, borne by a Çúdra woman to a man who has no other offspring, should obtain a maintenance ; and let kinsmen take the residue of the estate." Gautama :[2] "A son by a Çúdra woman, born unto a man who leaves no [legitimate offspring, shall, if he be strictly obedient like a pupil, receive a provision for his maintenance." *A provision, for his maintenance ;* or, 'as a means of livelihood.'

But must be maintained.

31. The same author :[3] Sons termed Pratiloma [shall have an allotment] similar to that of the son produced by a woman of the servile class." *Sons termed Pratiloma,* meaning, those produced by a woman, higher than the begetter with respect to class.

Shares of sons begotten in inverse order.

32. Yájñavalkya[4] states a distinction with regard to a son begotten by a Çúdra on a woman not married to him : "Even a son begotten by a Çúdra on a female slave, may take a share, by the father's choice. But if the father be dead, the brethren should make him partaker of the moiety of a share." *Choice,* the pleasure of the father. From specifying *by a Çúdra,* it is clear, that a son begotten by a twice-born man on a female slave does not obtain a share, even by the father's choice : Neither after the death of the father, will he get the half ; nor, in the absence of sons or other [heirs], will he get the whole. This is the argument of the Madana Ratna, and others.

Illegitimate sons of Çudras take a XCIX share by the father's choice ; and may claim half a share after his death.

33. A distinction is thus declared respecting a son born after partition : One born [to a man] separated [from his sons] will alone take the father's [wealth]." Bṛhaspati :[5] "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the sons begotten by him after the partition : those born before it, are declared to have no right. :"[6] "As in the wealth, so in the debts likewise, and in gifts, pledges, and purchases." They have no claims on each other except for acts of mourning and libations of water." If there be nothing but debts, then that [son] is not even bound to pay those debts, without receiving a share from those formerly separated ; for, as will afterwards be shewn,[7] "He who takes the estate, must be made to pay the debts of it."

A son born after a partition by the fathers, alone succeeds to him.

But is not bound to pay debts under certain circumstances.

1—Jím. Vá. 149, Digest 3d, 139. 2—Digest 3d, 139. 3—Digest 3d, 140.
4—Cole. Mit. 322, Jím. Vá. 153, Digest 3d, 143.
5—Cole. Mit. 281. Jím. Vá. 137, 8. Digest 3d, 49, 435. 6—Jím. Vá. 138.
7—Post chap. 5th, section 4th, para. 16.

34. But if any one of them have re-united [with the father], a partition with that [son born after partition] shall be made. As is declared by Manu :[1] "A son born after a division, shall alone take the paternal wealth : or he shall participate with such of the brethren as are re-united with the father."

But re-union with the father gives a right to share with that son.

35. Yájñavalkya[2] states a distinction, at a partition after the father's death, with respect to a son borne immediately afterwards, by a mother, or step-mother, or brother's wife, whose pregnancy was uncertain : "When the sons have been separated, one who is [afterwards] born, of a woman equal in class, shares the distribution." The partition is to be thus effected : Something is to be contributed by all the brothers, or others [who had previously shared], each something out of his own share, until the [posthumous sons's] share is equal to their own. Vishnu :[3] "Sons with whom the father has made a partition, should give a share to the son born after the distribution."

Distinction with regard to posthumous sons' shares.

36. And this we must understand as allowing for [subsequent] expenses and income. For if it be so, then, says the same author :[4] "His allotment must absolutely be made, out of the visible estate, corrected for income and expenditure." *Out of the visible estate*, out of the wealth actually forthcoming

Deduction to be first made for expenses and income.

37. At the time of a partition among brothers, this distinction is noted by Vasishtha :[5] "Partition of heritage [takes place] among brothers, [having waited] till after the delivery of such of the women as are childless [but pregnant]." *Having waited* is omitted [and supplied].

Partition not to be made till delivery of pregnant women.

38. A further distinction in a partition after death of the father, is stated by Bṛihaspati :[6] "For younger brothers, whose investiture and other ceremonies have not been performed, their elder brothers shall perform them, out of the collected wealth of the father." The term yavíyasaḥ, [is substituted for yavíyáṁsaḥ, with the freedom exercised by ancient sages] after the manner of the Vedas, by omitting the regular inflection [num] and the prolongation of the vowel [dírgha].

Initiation of younger brothers.

1—Chapter 9th, v. 216. Cole. Mit. 281. Jím. Vá. 136. Digest 3d, 50. The translation of the Mitákshará is followed.

2—Cole. Mit. 280, Jím. Vá. 138. Digest 3d, 436. 3—Jím. Vá. 138, Digest 3d, 51.

4—Yájnavalkya [in continuation of his text partially quoted above]. Cole. Mit. 282. Jím. Va. 138, Digest 3d, 436.

5—Cole. Mit. 283, Jím. Vá. 39.

6—Digest 3d, 101. where the subsequent explanation is noticed.

And of sisters, to be made by the eldest brother out of the common estate.

39. The mention of *brothers*, brings in the sisters also. Even so the same author: "And those unmarried daughters who are as yet uninitiated, must be initiated, by their eldest brother, even out of the father's wealth, according to the [usual] rite."

CI.

Amount to be allowed for marriage of daughters.

40. Yájñavalkya[1] [premising]: "Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed:" states a distinction in regard to initiation of sisters: "But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share;" meaning, that a fourth part of such share as would be allotted to a son of such class as the sister [happens to be,] being given to each sister [according to her rank], they are to be initiated.[2]

Sons, principal and secondary.

41. For the sake of consistency in deciding upon taking the heritage Yájñavalkya[3] gives this [detailed] description of sons principal and secondary: 1st, The legitimate son, [aurasa] is one procreated on the lawful wedded wife: 2d, Equal to him is the son of an appointed daughter [putriká]: 3d, The son of the wife, [kshetraja] is one begotten on a wife by a kinsman of her husband, or by some other relative: 4th, One secretly produced in the house, is a son of hidden origin: 5th, A damsel's child, is one born of an unmarried woman: he is considered as son of his maternal grand-sire: 6th, A child begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage] is called the son of a twice-married woman: 7th, He whom his father or his mother give for adoption, shall be considered as a son given [dattaka]: 8th, A son bought, is one who was sold by his father, and mother: 9th, A son made, is one adopted by the man himself. 10th, One who gives himself, is self-given: 11th, A child, accepted while yet in the womb, iso ne received with a bride: 12th, He who is taken for adoption, having been forsaken by his parents, is a deserted son."

42. The *legitimate son*, born of a woman of equal class, and lawfully married, is the principal, [Of those secondary].

Of sons secondary, the author notices only the 2d.

43. The *son of an appointed daughter*, is of two kinds: Of which the first is thus explained by Vasishtha:[4] "This damsel, who has no brother, "I will give unto thee, decked with ornaments: the son, who may be born

1—Cole. Mit. 285-6, Jím. Vá. 65. Digest 3d, 96. Reports 1st, 419.

2—Or married, since marriage is the only one of the rites of initiation [saṃskára] to which a female is entitled. See note to page 289 of the Mitákshará.

3—Cole. Mit. 301, Digest 3rd, 860, et.

4—Cole. Mit. 303. Jím. Vá. 153. Digest 3d, 171.

of her shall be my son." And the other [kind] is thus noticed by the same :[1] "The appointed daughter is considered to be the third [description of sons]." In this case, the father's obsequies and the like, are to be performed by the [appointed] daughter alone.

'CII.

44. The *son of the wife,* is one begotten on the wife of a brother or other [relative dying] without male issue, under the orders of the eldest brother, by [his] younger brother, or other [relative as the case may be] being of the same lineage.

3d,

45. The *son of a twice-married woman,* is he who is produced of the second marriage of a woman, whether a virgin unenjoyed by her first husband, or whose first marriage had been consummated.

6th, and

46. Here we must mark, that with the exception of the given son, [all the other ten] secondary sons are set aside in the Kali or present age, for we read, in the prohibitions of it. "The acceptance likewise of affiliations, other than those of a legitimate and *adopted* son."[2]

7th.

SECTION V.

On Adoption (Dattaka).

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1. Manu says :[3] "He is called a son given [dattrima], whom his father *or* mother affectionately gives as a son, being alike [by class], and in a time of distress; confirming the gift with water." According to Madana: 'The disjunctive '*or*,' means, that if the mother be not present, the father alone may give him away; and if the father be dead, the mother the same; but if both be alive, then even both.' From his using the word in distress, (it seems that) if not in distress, he must not be given.

Qualifications or an adoption.

2. Vijñáneçvara[4] says, 'This prohibition regards the giver only (and not the gift); as affecting the person, and not the religious ceremony, [kratvártha'][5] But it is not so; for the certainty of the religious ceremony is ascertained from the invisible [or prospective] nature

The want of them affects the gift as well as the giver.

1—Cole. Mit. 304.

2—See "General note" to the translation of Manu · page 365, text, number 8.

3—Chapter 9th, 168. Mit. 309. Digest 3d, 258. Reports 1st, 193.

4—Cole. Mit. 309. 5—Cole. Mit. 249.

of this [rule regarding gift of a son] in the text. Or, if indeed a visible [existing] object [be allowed for obviating the exception, as to distress], still, by reason of the absolute necessity for the object of the rule being prospective in regard to the theme in hand, in going beyond it, the establishing of the invisible [prospective] benefit produced by the ceremony, and not before existing, [is brought about]. Some however say, 'To the word distress, the sense of a prohibition does not apply, because of the want of that quality of the Parisankhyá rules, [which would shew] non-existence of distress, by the absurdity they would involve, among other things, of quitting the straightforward sense of the text: and that we require only to suppose some sign or motive of distress; not that, when distress is the inciting motive, by not giving the son the crime of [not relieving] distress [will be incurred]; because the mere connexion of name and person in this text is to be understood, and there is, in [declaring] the necessity of distress, a want of the actual completion of the gift.

CIII.

3. Moreover, the assertion made by him [Vijñáneçvara] in his chapter on marriage[1] that: 'In transgressing the prohibition against [espousing] sickly brides, and the like, it is merely an opposition to a manifest object, [or rule], whilst the state of a lawful wife is superinduced notwithstanding,' is by the above argument overruled.

A disputed term examined, and defined.

4. *Alike*, according to Medhátithi, means, 'not by tribe, but by qualities suitable to the family: accordingly, a Kshatriya, or a person of any other inferior *class*, may be the given son [dattaka] of a Bráhmana.[2] But Kulluka Bhatta says, it means 'equal in *class*,' and this is correct; for Yájñavalkya, after enumerating the twelve sorts of sons, in this way: "The legitimate son is one procreated on the lawful wedded wife:" &c., says:[3] This law is propounded by me in regard to sons equal by class." And this I will make clear by two texts of Çaunaka, to be cited hereafter [para. 9]. Vijñaneçvara also declares the same:[4] "By the eldest son, as soon as born, a man becomes the father of male issue;" 'for the eldest chiefly fulfils the office of a son, and is therefore not to be given.' And this prohibition also regards the giver only, and not the taker, according to the same authority.[5]

1—Áchárádhyáya, viváha prakarana, leaf 6, page 2nd.

2—Cole. Mit. 369 note, where our Author is noticed—Datt. Mím. 32, Datt. Chand. 159. Reports 1st, 193.

3—Mit. 320, Jim. Vá. 151, Digest 3d, 275.

4—Mit. 310, quoting Manu, chapter 9th, 106, the first hemistich here, and the last in the next paragraph.

5—It is not however very clear that such is the intent of the Mitákshará.

Maitrá Varuna is alone denoted as the object, as is the most fit, from his act of uttering the summons in the formula: "The holder of the stick [he who personates Maitrá Varuna] then utters the invocations [to the deities, for their presence in the sacrifice]." Even so, in this place, since the state of non-release from debt [results from want of a son], and because the sixth case [of Çúdras, in the text] has the sense of the fourth [to or for], therefore both the daughter's and the sister's son alone, are to be admitted for Çúdras, as the means [of relieving the father from debt]. So, by the propriety of only these two, the purport of the restriction of the rule is declared: thus, "The daughter's son and the sister's son alone are for Çúdras." But if the impossibility of it for Çúdras [be urged], by reason of the impropriety of the restriction, [I answer]; they are both exhibited by the texts as the objects for Çúdras alone since it would be absurd to make the restriction apply to the agent, [parisankhyá] in respect to Bráhmans and the rest.

Conclusion drawn that they are the most proper for Çúdras.

11. Therefore the daughter's son, and sister's son even, are the most proper for Çúdras: In default of them, another also [may be adopted], if of similar class, as declared by the same author [para. 9]: "Of Çúdras from amongst those of the Çúdra class." This word, *class*, is not [necessarily] implied, by its connexion with daughter's son and sister's son,' alone, for there is no [necessary] mutual connexion between the states, of 'daughter's son, sister's son, and common caste:' And there is a risk of our [thereby] making an absurdity of parallel passages of the same author. This is fully explained by my father in his Dvaita Nirnaya, and the same is the rule [*áchára*] ordained by sages.

CVII.

Assertion to the contrary, in the Çuddhi Viveka, controverted.

12. And the assertion of their right [to adopt] being demonstrable in the very same way, as [the argument upon] the word Nishádastha pati,[1] the assertion in the Çúddhi Viveka, that 'there is a want of title for Çúdras to celebrate the acceptance of a son with a Homa authenticated by Vedaka mantras,' is hereby refuted.

Ceremony, for Çúdras, to be by means of a Bráhman.

13. The Homa however, being accompanied with mantras, must be celebrated by them through the instrumentality of a Bráhman, in conformity to the text of Paráçara: "When fasts, vows, burnt sacrifices, ablution at a tírtha, silent meditation, or prayer, and the like, are performed by a Bráhman [on the part of another] the benefit of them accrues to him who caused their performance." And the very same is declared, both by Smártha and Harinátha.

1—['The lord of those residing among the Nishádas,' who might be of any caste, and therefore entitled to adopt; but when read Nishада sthapati, 'the Lord of the Nishádas,' that is, one of that caste, he, as being lower than a Çúdra, could not adopt, in the proper form.]

14. However, what [in seeming contradiction] Paráçara himself adds: "The Bráhmana who, for the sake of dakshiná performs Homa with sacrificial materials furnished by a Çúdra, shall himself *become* a Çúdra and the Çúdra shall become a Bráhmana," means, according to Madana, that the whole benefit of the act accrues to the Çúdra, whilst the crime fully attaches to the Bráhmana.

Another text of Paráçara explained.

15. The right also pertains to women, equally as to Çúdras, by reason of the text: "Women and Çúdras are governed by the same law."

One law, for women and Çúdras.

16. Vasishtha:[1] "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore his father and mother have power to give, to sell, or to abandon, their son. But let no man give, or accept, an only son: for he is [destined] to continue the line of his ancestors. Let not a woman give or accept a son, unless with the assent of her husband."[2] "A person, being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the prayers denominated 'vyáhriti' in the middle of his dwelling. But, if a doubt arise, let him set apart, like a Çudra, one whose kindred are remote; for it is declared [in the Vedas]: 'Many are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."

The proper objects for adoption pointed out.

CVII.

17. Therefore, if there must be an order from the husband, it is for a married woman only, as above shewn; but for a widow, even without it [adoption] may be made, with the permission of her father, or, on failure of him, of the relations [Nyáti] under this precept: "Let a female be taken care of, by her father while a child, by her husband when married, and by her sons, in her old age. If none of these exist, let her other relations [Nyáti] take care of her.[3] A woman is never fit for independence." This has been declared by Yájña-valkya[4] only with reference to difference of age, and the circumstances of a woman, being under the power of her husband. In case of his being dead, or [unable] from old age, or other [disqualification], or from helplessness, then [she is] indeed under the power of her sons or other relatives.

Deduction in favour of widows' power to adopt.

1—Datt. Mím. 93, Mit. 308-10-11-15 and notes. Digest 3d, 242. Reports 1st, 190.

2—Datt. Chand. 169 takes up the text here, Reports 2d, 450.

3—Reports 1st, 197, 2d, 450 Nyáti is sometimes interpreted "Caste," but improperly. It means Gentile kindred only. See Mit. 308, note, where our Author's opinion is noticed on this point.

4—Digest 2d, 381. Reports 2d, 450.

A similar text of Kátyáyana explained, only to relate to married women.

18. By Kátyáyana also it has been said[1] "If a woman, without the orders of her father, husband, or son, should perform obsequies, such obsequies are of doubtful validity." What is here said of the orders of her father, husband, &c. relates only to the difference of age. *Obsequies* here means, rites performed for the other world; wherefore, at whatever age a married woman may [require to] receive the command of her husband, that very command is in the case of a widow not required, since the command of any other person, not here mentioned, is nowhere declared requisite. Therefore the right of adoption, even without the order of her [late] husband, does pertain to a widow.

CIX.

Explanation of Vásishtha's text in favour of the brother's son first

19. The *unremote kinsman*, means, in each case, the sapinda nearest [to the adopter]; among whom again, the nearest of all is the brother's son; for: "If among several brothers of the whole blood, one of them have a son born, Manu[2] pronounces them all fathers of a male child by means of that son." And the Mitákshará[3] has the same. And this must be the proper motive of that precept; for it is impossible there can be any other. The *remote* kinsman, means 'one of another caste.' And my father has said that; "A married man, who has even had a son born, may become an adopted son." This also is reasonable, for it is not in opposition [to other maxims].[4]

A text of the Káliká Purána, cited and explained.

20. As for this text of the Káliká Purána:[5] "O Lord of the earth, a son, having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man [anyastas]. The ceremony of tonsure and of investiture[6] being indeed performed, under his own family name, sons given, and the rest may be considered as issue: else they are termed slaves. After their fifth year, O king, sons given, and the rest are not sons. [But] having taken a boy five years old, the adopter should first perform the sacrifice for male issue." It relates to asagotras only. *Unto the ceremony of tonsure inclusive;* The particle, *ang*, here is inceptive, used for the sake of entirely including all such cases; for if it be meant as a limit conclusive, it will have the objection of being in opposition to

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1—Reports 1st, 195, 2nd, 451.

2—3—Chapter 9th, 182. Mit. 320, Jím. Vá. 200, Digest 3rd, 266. Reports 2d, 86. Datt. Mim. 33. Datt. Chand. 161.

4—Reports 1st 196.

5—Datt. Mím. 68. Datt. Chand. 175. Mit. 310. and Notes quoting our Author's opinion. Digest 3d, 148-9. Reports 1st, 195.

6—The reading of the Mayúkha is purposely more explicit here than in the other works, which read 'tonsure and other rites.'

the ceremonies of tonsure and investiture [specified in the text.] But such reliance is not to be placed on this last passage, because it is not to be found in two or three copies of the Káliká Purána.

CX.

21. The son given is of two sorts; first, simple; second, son of two fathers, (dvyámushyáyana). The first, is one bestowed without any special compact; the last, is one given under an agreement to this effect, 'he shall belong to us both.'[1] Here the first will perform the funeral ceremony, and the other rites for the adopter only, as may thus [be demonstrated]: In the desire of accomplishing the acceptance of a son, by the term 'son' being in the second person, in the phrase, "being about to adopt a son" [para. 16] and the like, detailing the rules for the ceremony, the production of a son is declared. And not that the adopter can possibly imagine, 'his filial relationship is derived from my capacity of begetting.' Therefore, from the word 'son,' after having instanced the whole duties of a son, we must admit the production of one, as far as requisite, and not previously existing. Hence, in the family of the acceptor, the condition may [in this way] be brought about: From which result the acts suitable to the different relations, of son, father, and the rest. Even as is declared by Manu:[2] "A given son must never claim the family and estate of his natural father: the funeral oblation follows the family and estate, but of him who has given away his son, the obsequies fail.'

'Son given,' of two kinds: 'Simple adopted,' and 'Son of two fathers.'

22. *Follows the family and estate*, goes after the family and estate, the latter expression corresponding generally with the term "goes along with." The *given son*, the simple adopted; since, in the case of a Dvyámushyáyana, the [double] obligation of family connexion and the like, will be hereafter declared. The *funeral oblation* according to Medhatithi, Kulluka Bhatta, and others, means the funeral ceremony, and other Çráddhas. According to other authors again the *funeral oblation*, means sapinda connexion; and *obsequies*, the funeral and other Çráddhas. The correct interpretation is this: As by the passage:[3] "He, who has begotten a son, and whose hair his [still] black, may maintain a sacred fire," the difference as to his age and condition is exemplified, and again, the difference of place, by the passage: He measures out the inner portion, and the outer portion of the altar;" even so, in this place, having merely exemplified the acts connected with the obligation of the funeral oblation for the natural father and the rest, by the terms, 'family,' 'estate,' 'funeral oblation,' and 'obsequies,' the cessation of them is declared.

Explanation of Manu's text.

CXI.

1—Mit. 308 note, quoting this passage.

2—Chapter 9th, 142. Mit. 315. Digest. 3d, 147. Datt. Mim. 105. Datt. Chand. 191.

3—Mit. page 253 note. Reports 2nd, 663.

23. From this also results, the establishment of the cessation of family connexion with the father's whole brother, and the rest. Therefore also, even the son begotten by the simple adopted son, shall perform [his father's] sapiṇḍí karan, párvana obsequies, and the rest, in conjunction even with the [original] adopter. Even so, his son also.

A text of Kátyáyana held to refer to the 'son of two fathers.'

24. However, what Kátyáyana, opening the discussion of the 'son of two fathers,' by this text: 'Now, when the family connexion of sons, either adopted, purchased, or son of an appointed daughter, remains unsettled, through their acceptance by another they become sons of two fathers," and the like, says: "If there be no offspring of these adopters by their own wives, they [the secondary sons,] take the estate, and give the funeral oblations to three ancestors; if there be no [offspring], to either [the giver or receiver], they will give the oblation for both. Having separately considered both in one Çráddha, they shall call upon both of them." Has reference to the 'son of two fathers,' because of his premising: '*They become sons of two fathers.*'

CXII.

The obligations and rights of the son of two fathers in regard to obsequies and succession, defined whether other sons exist, or not.

25. If either the natural parent, or the adoptive father, have no other male issue, the Dvyámushyáyaṇa, or 'son of two fathers,' shall present the funeral oblation to him, and shall take his estate; but not so if there be [male issue]. If both have legitimate sons, he offers an oblation to neither, but takes a quarter of the share allotted to a legitimate son of his adoptive father;[1] from this text of Vasishṭha:[2] "When a son has been adopted, if a legitimate son be afterwards born, the given son takes a fourth part:" and likewise this of Kátyáyana:[3] "If a legitimate son be born, the rest are pronounced shares of *a fourth part*, provided they belong to the same tribe: but if they be of a different class, they are entitled to food and raiment only." The reading in the Kalpataru is, 'a third part.' Those of *the same tribe*, according to Vijñáneçvara[4] are, the son of the wife, the son adopted, and the rest.

His duties defined in default of sons to both.

26. But if sons are wanting to both, then he shall perform a single Çráddha to both also; in the mode declared above, by the term "in one Çráddha," &c. Moreover in the Hemádri is a text of Kṛshnájini:[5] "As many as there may be degrees of forefathers, with so many, their own forefathers, let sons given, and the rest associate

1—This passage is quoted in the notes to the Mitákshará, page 318.

2—Datt. Mím. 153. Datt. Chand. 201. Ante para. 16.

3—Mit. 316. Jim. Vá. 157. Datt. Mím. 61. Datt. Chand. 200 and note there.

4—Mit., page 316. Ante Section 4th, para. 41—et seq.

5—Datt. Mím. 120. Datt. Chand. 139.

the deceased; in order, their sons with two forefathers, their grandsons with one, should [do] the same. The fourth degree, at pleasure.[1] This [sapinda relation] extends to three degrees." "At the regular seasons, there is no distinction of degrees: but on the [anniversary] day of death, having invoked them singly, let him perform the Çráddha according to the proper rite." Which sense is consonant also to the text of Kátyáyana. [para. 24.]

Detailed explanation of the text.

CXIII.

27. This is the meaning: 'The son of two fathers, and the rest, shall perform the sapindí karan of those dying in the families of both the real and adoptive father, together with those of the same degree, [that is] in company with the father [of the deceased], and the rest. But the sons of those adopted, and the rest, shall perform their sapindí karan together with that of both the natural, and adoptive [father]. Their grandsons also shall associate their real father with their adoptive grandfather, and their real great-grandfather.' *The fourth degree,* their great-grandson. *Pleasure,* desire; that is, they shall invoke the adopter, or not, [as they please]; but the real father, they shall even summon. *At the regular seasons;* that is, at the days of new moon, [amávásyá] and other seasons, the Çráddha according to the degrees of [forefathers] of the real and adoptive fathers, is to be celebrated. But on the anniversary of death, having invoked the single person alone, let them celebrate the Ekoddishta çráddha for him.

Opponents argument against the term 'simple adopted.'

28. Some however say: 'Since the right of simple adoption is not [mentioned], it does not exist; and there is no agreement to the effect: 'He belongs to us both,' because no rite for it exists. One taken without this agreement, therefore, is even a son of two fathers.—And even by him, either a double Çráddha, or a single one, may be celebrated, by invoking [singly or together] both his real and adoptive father, in the Amávásyá and other [Çráddhas.] But the sapindí karan, Párvana, and other Çráddhas, must be performed for the adopted son, in company with both his real and adoptive father, by his son. Even so, by his son, and the rest.'

Answered and refuted.

CXIV.

29. This must be considered. Because, though the phrase 'simple adopted' is certainly nowhere mentioned, still, however, this [meaning] satisfactorily results, even from the declaration of the entire cessation of the connexion with the real father and the rest, by the above recorded text of Manu [para. 21] which prohibition does not apply in a Dvyámushyána adoption. Further: A marriage in the family of the procreator [Víjí] within seven degrees, which

1—Chhundu instead of Chhedu "excluded" which is the reading of the Datt. Mim. and Chand.

is altogether illegal according to the text of Gautama:[1] With the kinsmen on the side of the father, viz. of the procreator, [Víjí] beyond the seventh degree; and with those on the mother's side, beyond the fifth, &c.," would be unmeaning in a Dvyámusháyaṇa adoption, because the sapiṇḍa affinity [to the procreator] still exists therein [beyond that]. Therefore, the term, 'simple adopted,' must necessarily be expressed, to make the same agree with that of the text, because of the declaration of the prohibition of the sapiṇḍa connexion.

A text of the Pravarádhyáya adduced in favour of the argument.

30. Moreover, in the Pravarádhyáya [it is said]:[2] "They who become sons of two fathers, [dvyámusháyaṇa] whether adopted, purchased, or the rest, cannot take in marriage any one of either Gotra, after the example of Çaunga and Çaiçhira." In which also, the term *either Gotra*, is spoken of the Dvyámusháyaṇa. And the prohibition of connexion in the real family [Gotra] is declared by the text of Manu; which is the difference [between the two]. By the distinction also, between adopted son, 'simple,' and, 'son of two fathers' [the term, simple] is proper to be included; whence even the propriety of the term 'simple adopted son' is established.

And supported by a quotation from the Mímámsá.

31. Even so Bhatta Someçvara,[3] satisfactorily reconciles the one doctrine, under the text of Manu [para. 21]: "That there was a cessation of the sapiṇḍa connexion between Arjuna [as] the son of Kunti, born after she was given in adoption by [her father] Sura to Kuntibhoja, and Subhadrá, [as] the daughter of Vasudeva, who was the son of Sura," with the opposite opinion, "that Arjuna could not marry the said Subhadrá," as might seem to result from that text of Gautama [para. 29], applying solely to the prohibition of [a wife] come of the father's kindred," by adducing the affirmation of the commentaries in favour of the utter exclusion of the family connexion [after the adoption.][4]

1—Datt. Mím. 107. 2—Datt. Mím. page 126 and note. Datt. Chan. 182.

3—In the Mímámsá.

4—This will be more intelligible from the following genealogy. Arjuna's real father was Indra, though he took the name of Pándava from his mother's husband Pánda, and his marrying Subhadrá, espoused his maternal uncle's daughter [which is reprobated in general: see Chap. 1st, Sec. 1st, para. 13]: but as the mother had been previously given away in adoption, their relationship, as cousins by the mother's side, had ceased.

CXV.

An author's opinion refuted.

32. As for what some author says : 'That the sapinda connexion of Kunti with the family of Sura, is declared by Someçvara, under the text of Gautama, to continue through seven degrees,' the reason is, that he has not read the book. Therefore, the text of Gautama, after having previously declared the cessation of sapinda relationship, refers to the prohibition [of marriage] in the family of the natural father, and not as considering the subject of sapinda relationship. In this way, the correctness of the terms, son 'simple adopted,' and 'son of two fathers,' being established, the possibility of an agreement to the effect : "He shall belong to us both," [para. 21] is likewise established; for the object is manifest, by the accepter knowing him to be 'son of two fathers.' And again, the sapinda relationship of the simple adopted son, extends, in his adoptive father's family, to seven degrees on the father's side, and to five degrees on the mother's side.

The authority of three texts denied, to apply to the simple adopted son.

33. As for these texts of Vriddha Gautama :[1] "The sons given, purchased, and the rest, who are adopted from those of his own general family, by the observance of form, enter the lineage [gotrata, of the adopter]. But the relation of sapinda is not included," as well as of Brhat Manu :[2] "Sons given, purchased, and the rest, retain relation of sapinda to the natural father, as extending to the fifth and the seventh, degrees : like this, their general family, which is also that of their adopter," and moreover of Nárada :[3] "For the sake of religious merit, [being adopted] like the real son, under the family name of each respectively [tat tat gotrena] sons [who are] reared : for such, merely participation in a share, and [the oblation of] the funeral cake, is declared" they are, all three, not of good authority ; [at least, if their authority be good, they are to be used only for the sake of determining the want of sapinda relationship of] the Dvyamushyáyana as far as seven generations, in the family of the adopter ; for, in the case of a simple adopted son, his sapinda relationship, as far as seven generations in the family of the adopter [Pálaka] is declared [to commence], by the before quoted text of Gautama, [para. 29] and because his sapinda relationship at the same time, in the family of his real father, is declared to cease by the text of Manu [pâra. 21].

CXVI.

The reasoning of certain authors declared to be unfounded.

34. As for the following matter, written by certain respectable authors in discussing the subject of sapinda relationship : "Yet if [an adopted son's] investiture and other initiatory rites, have been celebrated in the general family [gotra] of his real father, his sapinda relationship to his real father's family [kula] is

1—Datt. Mím. 108-26, noticing our Author's objection. Datt. Chand. 191.

2—Datt. Mím. 27 and note q. v. 106.

3—Datt. Mím. 109 note, where our Author is again noticed and the text attributed to Devala.

retained, both to the father, and to the mother; to the fifth degree [from the mother,] and to the seventh [from the father]: but to three degrees in the family of the adopter, by reason that there is a want of the state of begetting, and of investiture, to the author of the secondary paternal relation, the adopter. However, if the adopted son be [so] initiated in the general family of the adopter, his [sapinda relationship] with the adopter and the rest [of his family, will continue] even to seven generations, and to five [as above :"] its foundation is not known.

Conclusion drawn.

35. Again : If the paternal relation exists not, by reason of the absence of the acts of begetting, of investiture, and the like, in what manner arises the adopted son's sapinda relationship to either [even,] as far as three degrees or his performance of Çráddha and other ceremonies for the adopter and the rest of his family ? Neither can it be said, 'the paternal relation and sapinda relation are [necessarily] connected,' because by this, on the absence of the first, the want of the sapinda relationship would ensue. The result of it is this : Sapinda relationship even [of the adopted son], with the adopter and the rest of his family, has been already pronounced from the text of Gautama and others [para. 29 :] "With the kinsmen on the side of the procreator beyond the seventh degree." And this is conclusive.

Summary in conclusion

CXVII.

36. [1] Now this is the rite for gift and acceptance of a son. In this matter, the power of giving [in adoption], where there are more sons than one, allows even of any one of them, not being the eldest; and that of acceptance, attaches to one who has not had a son born, or whose sons are dead. The right of married women [to adopt, is good] with the orders of the husband; in default of him, of their [own] fathers, and the rest. Of Çudras [adopting] the daughter's son, or the sister's son, are to be taken, and no other. By the other [superior classes] however, the nearest sapinda relation; in default of them, the remote [kindred], but not one of another caste.

The gift inceptive.

37. Then the giver, on the day [fixed] for the acceptance, having duly called to mind the [proper] time, and the other [considerations], and having thus vowed : 'I am about to make a gift of my son for the cessation,[2] between myself and the rest [of my family], and this son, of the several duties arising from the reciprocal connexion, at present existing between [us, as] father, son, and the like,' shall perform the Ganeça pujá, svasti váchan,[3] mátreká pujá, Vriddhi Çráddha, and the other rites.

1—The remainder of this section, though not found in any Gujarát copies, was introduced from one obtained at Puná. It appears to be an extract from some other work, or, a summary of the doctrine of the Mayúkha, by some more modern authors.'

2—In the original, it is "continuation" pravritti, for nivritti, which the sense requiring, was adopted.

3—A religious rite preparatory to any important observance [Wilson], where the mode of it is described.

38. The accepter too, having fasted on the day preceding that for the acceptance, and on the next day having summoned his kinsmen, and made known his taking a son to the king; having called to mind the time, and other [considerations], and having thus vowed: 'I am about to take (this person) as a son, to the cessation of the mutual connexion of father, son, or the like, at present subsisting between him, and his procreator and the rest (of that family,) and for the accession between him and me, and the rest (of my family), of the duties mutually arising from the respective connexion of father, son, and the like (by this adoption),' and having performed, the Ganeça pujá, Svasti váchan, Matreká pujá, Vriddhi Çráddha, A'chárya varan, and the various reverences to be made, after a special vow to the áchárya, with the ear-rings, ring, suit of clothes, turban, madhuparka and the rest, let him give a feast to three Bráhmans, and to his kindred.

The acceptance inceptive.

39. And the A'chárya, having thus vowed: 'I am about to do my proper duties,' and having performed the marking out of the altar, and the other [acts] as far as the consecration of the fire, inclusive, shall celebrate the rites enjoined in the words of the Vedas[1] and the rest, as far as the straining of the clarified butter inclusive.

Officiating priest's duties.

CXVIII.

40. Then let the accepter, having gone near the giver, thus beg, 'Give me this son;'[2] and the giver, with relation of the five prayers [the initial words of the first of which are] Ye yajñena, having called to mind the time, and the rest, having repeated his motives as above detailed, shall declare, 'I give you this son, adorned with ornaments, according to my ability.' This is the gift of his son, commencing with the words of the Vedas.[3]

Gift completed.

41. Then the accepter, having accepted him with the prayer devasya tva, and the others, and having repeated the Káma stuti in the form enjoined by his own çákhá, having inaudibly repeated the mystical invocation angád angát, &c., having kissed the forehead of the child, let him carry him within his own house, adorned with clothes and so forth, accompanied with rejoicings.

Acceptance completed.

42. Next, the A'chárya, having performed the setting up of the clarified butter, and the rest, as far as the portioning of it, inclusive, having performed a burnt-offering even with the clarified butter, with the Vyáhriti incantation, both backwards and in due order, having dressed the oblations, let him offer a burnt offering. He then com-

Priests' duties, continued and concluded.

1—From 'anvadháne chakshu,' line 1st, to 'kratam,' line 3d

2—Datt. Mím. 97. For this and the following passages, turn to para. 8, and the references there.

3—From 'Ye yajñena,' line 5, to 'Gati.'

mences the principal burnt-offering of dressed oblations, for acceptance of a son, with the words of the Veda.[1] Having commenced with the words, "Tubhyam agne," &c. let him conclude with those commencing "Prágvadattaḥ." Thus ends the rite of adoption.

CXIX.

SECTION VI.

Partition of debts, and of concealed effects.

The debts, to be considered at a partition are of three kinds :

1. This settled, I return [to my subject].[2] Kátyáyana states a distinction in partition of debts :[3] "The debt of the father, one incurred by a parcener himself on account of the debts of the father, and one specially his own; debts so incurred, must be examined on a partition with the kinsmen." *On account of the debts of the father,* incurred for the sake of discharging the father's debts. *Specially his own,* [contradicted by other] than himself, for the maintenance of his family. The same author says :[4] "A debt contracted by a brother, a paternal uncle, or a mother, for the [support of the] family, must be fully discharged by the coheirs, when partition is made."

Such debts, when covered by the estate to be first paid, and the residue to be divided.

2. The same author also says, in case the debt be less than the property :[5] "But, having given the debt [to the creditors], and what was bestowed through affection, let them divide the balance." *Bestowed,* promised, Nárada :[6] "What remains, after discharging the father's donation, and after payment of his debts, may be divided by the brethren, so that their father continue not a debtor." *The father's donation,* what had been promised by the father.

Payment out of the paternal estate restricted to particular obligations.

CXX.

The same author says :[7] "What has been given for religious purposes, and through affection, and the debt which has been added by himself, that [and] the visible [estate], let them divide; [any other debt] is not to be given, out of the paternal estate." The meaning is this : 'What has been given for religious purposes, as well as through affection; [that is] what it has been added by the father himself, [that is] what has been made by himself; such debts [and the visible estate] they shall divide. Payment [dána] is not [allowable], out of the paternal estate, of debts other than these.'

1—In the last line of the page.

2—From section 4th, para. 40th. 3—Digest 3d, 390. 4—Digest 3d, 389.

5—Digest 3d, 388, where a different turn is given to the text.

6—Digest 3rd, 73, Jím. Vá. 21, where the same difference is observable between these two translations, as in that of the foregoing text and our Author, whose version is altogether different from both.

7—Digest 3d, 391.

3. The same author also says, in suspicion of effects undiscovered:[1] "A house, arable land, or quadrupeds, discovered [after partition, as the property of the deceased], must be [equally] divided; if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law." "Thus Manu declared, that household utensils, beasts of burthen, and milch cattle, ornaments, and workmen, must be divided, when discovered [among the heirs]: if effects are [suspected to be] hidden, a discovery must be obtained by the Kosha mode of ordeal."[2] *Workmen:* slaves, and the like. Here even, the Kosha ordeal itself has been fixed in such matters, in the chapter on ordeals, by this very authority: "In sustaining the truth of doubts in partition among heirs, at all times, [and] in settling a multitude of proofs [kriyâ], let them even undergo the Kosha ordeal."

Partition of effects concealed and discovered after partition; with the mode prescribed for their discovery.

SECTION VII.

On property not liable to division, (Avibhájyam.)

1. Manu says:[3] "Wealth, however, acquired by learning, belongs exclusively to any one of them who acquired it; so does any thing given by a friend, received [at or] on account of marriage, or presented as a mark of respect to a guest." Vyása:[4] "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it], and shall not be claimed by the co-heirs." *Received from affectionate kindred;* [Saudáyakam; this term] will be hereafter explained.[5]

Certain property not subject to partition.

CXXI.

2. This [wealth] must be understood to be acquired, without loss to the father's estate. Thus also Yájñavalkya:[6] "Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as, a present from a friend, or a gift at nuptials, does not appertain to the co-heirs; nor shall he who recovers hereditary property, which had been taken away, give it up to the parceners: nor what has been gained by science."

If gained without assistance from the common stock.

1—Digest 3d, 395, where the text is attributed to Kátyáyana; at page 90 of that vol. the last stanza is read differently, and attributed to Brhaspati.

2—See Chap. 3d, Reports 1st, 64, 2d, 57.

3—Chap. 9th, 206. Jím Vá. 110-116. Digest 3d, 332.

4—Jím. Vá. 110-17, Digest 3d, 333.

5—At para. 13; and in section 10th, para. 8th.

6—Mit. 268. Jím. Vá. 109-117. Digest 3d, 348. Reports 1st, 64-244.

Special rule regarding land recovered.

3. But Çankha declares a special rule, relating to the recovery of land, derived from ancestors but long lost :[1] "Land [inherited] in regular succession, but which had been formerly lost, and which a single [heir] shall recover solely by his own labour, the rest may divide, according to their due allotment; having first given him a fourth part." That is, ' having given to the recoverer a *fourth part*, of the recovered, property, they shall divide the balance equally, with the recoverer.'

Other text adduced.

4. Manu says :[2] "What a brother has acquired by his labour without using the patrimony, he need not give up to the co-heirs; nor what has been gained by science." Vyása :[3] "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs, nor what he acquired by learning." Acquisition by *learning* is explained by Kátyáyana: "Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning."

Acquisitions through learning enumerated. CXXII.

5. The same author elucidates this term :[5] "What is gained by the solution [of a difficulty], after a prize has been offered, must be considered as acquired through science, and is not included in partition [among co-heirs."] What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, or for determining a doubtful point, or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science, and not subject to distribution." "The law is the same in regard also to artizans [çilpí], and to increase of price :"[6] "A prize which has been offered for the display of superior learning, and a gift received from a votary for whom a sacrifice was formerly performed; or a present from a pupil formerly instructed, sages have declared to be the acquisition of science: what is otherwise acquired, is [the] joint property [of the co-heirs]." Even what is won by surpassing another in learning, after a stake has been deposited, Bṛhaspati pronounces the acquisition of science, and impartible. What is obtained by the boast of learning, what is received from a pupil, or for the performance of a sacrifice, Bhṛgu calls the acquisition of *science*."

And defined.

6. *Solution*, according to the Madana Ratna, means, the reading of [passages of the Vedas] having the order [of construction, krama], and the sentences [jatá], and the like,[7] duly linked together. Some, again, say it is the interpretation,

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1—Mit. 268 Jím. Vá. 135. Digest 3d, 365.

2—Chap. 9th, 208. Mit. 271. Jím. Vá. 109-117. Digest 3d, 339. Of the two readings of this text, our author adopts that of the Mitákshará.

3—Jím. Vá. 109, Digest 3d, 311. 4—Mit. 271. Digest 3d, 332.

5—Jím. Vá. 127. Digest 3d, 333.

6—Digest 3d, 334. The quotation in Jím. Vá. breaks off after this.

7—See Asiatic Researches 8th, 390.

in a public assembly, of concealed [meanings] required to be made known. The construction is, 'solved after a prize [has been offered].' *Display*, public exhibition. *Superior reading*, pre-eminent reading. *In regard also to artizans*, meaning, that this law, respecting science, is to be applied also among artizans. *Increase of price* caused by great satisfaction [with the work]. *Performance of a sacrifice*, is merely an example.

All such liable to partition if made with assistance from the common stock. CXXIII.

7. Here also, in all these cases, indivisibility applies, only when no detriment has fallen on the paternal estate, in acquiring, as well superior knowledge, as wealth; for, in case of detriment [to the estate, the acquisition] is even divisible. Even so, Kátyáyana says:[1] "Yet Bṛhaspati has ordained, that wealth shall be partible, if it was gained by learned brothers who were instructed in the family by their father, or paternal grandfather, [or uncles]; and it is the same, if the wealth were acquired by valour, [with assistance from the family estate."]

The acquirer getting a double share.

8. Also in case of loss to the paternal estate even, the acquirer gets a double share, from this text of Vasishṭha:[2] "He amongst them, who has made an acquisition, may take a double portion of it."

An exception with regard to açquisition by learning.

9. Nárada states a distinction in some cases, in acquisition of wealth through learning:[3] "He who maintains the family of a brother studying science, shall take, even though not told, [açruta] a share of the wealth gained by science. The word açruta means unlearned, according to the Madana Ratna.[4] But the proper sense is, not promised, thus: 'I will give a share.'

Distinction in wealth acquired without detriment to the paternal estate.

10. Gautama[5] declares a distinction also, with regard to wealth acquired without detriment to the father's estate: "His own acquired wealth, a learned man may, if he please, give up to unlearned co-heirs." He who is versed in knowledge, is a *learned man*. The meaning is, that, with his own pleasure, he may give it to his unlearned brethren. Kátyáyana:[6] "No part of the wealth, which is gained by science, need be given, by a learned man, to his unlearned co-heirs; but such property must be yielded by him, to those who are equal, or superior, in learning:" "A learned man need not give a

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1—Digest 3d, 340. 2—Jím. Vá. 39. Digest 3d, 109-356.

3—Mit. 270. Jím. Vá. 111. Digest 3, 361.

4—The commentators are here differing about the sense to be given to Çruti, whether it is to mean the Vedas, [and thence the *knowledge* of them] or hearing, [and thence telling, *promise*, which last our author prefers.]

5—Jím. Vá. 112. Digest 3d, 349, but our author adopts a different reading.

6—Jím. Vá. 112. Digest 3d, 342.

7—The following text is one of Nárada, Jím. Vá. 112. Digest 3d, 342.

share of his own acquired wealth, without his assent to an unlearned co-heir: provided it were not gained by him, using the paternal estate." According to Madana, this prohibition applies, only where there exists other property for those brothers who are present: but on failure of other property, [a share of it] even must be given to them.

Gifts from the father &c., impartible, as well as acquisition by valour.

CXXIV.

11. Bṛhaspati declares that to be impartible, which has been given by the father or other [person]: "That which may have been given, either by the paternal grandfather, or the father, as [illegible]as by the mother, is not to be taken back; any[illegible]han that acquired by valour, or the wealth [illegible] a wife." Nárada: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father." Kátyáyana:[2] "That which is taken under a standard, is declared not to be subject to distribution. And also, what is seized [by a soldier] in war, after routing the forces of the enemy, and after risking his life for his lord, is named spoil taken under a standard." The same author says:[3] When [a soldier] performs a gallant action, despising danger; and favour is shewn to him by his lord, pleased with that action; whatever property is then received by him, shall be considered as gained by valour."

Acquisitions by valour partible, if assisted by the common stock.

12. Here Vyása states a distinction:[4] "The brethren participate in that wealth, which one of them gains by valour or the like, using any common property, either a vehicle [or weapon] or the like; to him, two shares should be given: but the rest should share alike.

Gift of affectionate kindred.

Wealth received with a maiden defined.

CXXV.

13. Vyása defines the gifts of affectionate kindred, [saudáyakam][5] "That which is received, by a married woman or by a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred." Kátyáyana:[6] "What is received with a damsel equal in class, at the time of accepting her [in marriage], let a man consider as wealth received with the maiden; it is deemed pure, and promotes increase [of prosperity]: But let him know that to be received on account of marriage, which is accepted by him with his bride: all such wealth is considered as vindicating the solemn rite."

1—Mit. 253. Jím. Vá. 110-117. Digest. 3d, 343.

2—3—Jím. Vá. 131. In the Digest 3d, 367, these texts are attributed to Manu, but not found in his Institutes.

4—Jím. Vá, 111. Digest 3d, 71.

5—The text is afterwards, in sect. 10th, para. 8th, attributed to Kátyáyana, and read differently "*with a maiden.*"

6—In the Digest 3d, 363, this text is attributed to Manu, but is not found.

14. What is acquired in this, or a similar manner: "The A'rsha rite again [consists in giving his daughter] after having received a pair of kine,"[1] is denominated, *wealth received with the maiden.* Here even, like wealth acquired by learning, such acquisition also is impartible, if it be acquired without detriment to the father's estate: But, if gained by any other means, except learning or the other [specified modes], it is even liable to partition. And so Manu:[2] "And if all of them, being unlearned, acquire property [before partition] by their own labour, there shall be an equal division of that property [without regard to the first born]; for it was not the wealth of their father: this rule is clearly settled." Labour, employment in agriculture, &c. *Not of their father*, is to be taken, as without assistance from the father's wealth.

Partition of wealth received, with a maiden governed by like rules as acquisitions by learning.

15. Other things exempt from partition, have been enumerated by Manu:[3] "Clothes, vehicles, ornaments; prepared food, water: women; sacrifices and pious acts; as well as the common way, are declared not liable to distribution." *Vehicles*, conveyances. The *clothes*, *conveyances*, and *ornaments*, belong respectively to the possessor, if they are of equal value. If the value of one article be more or less than that of another, then let them be divided.

Other things exempted from partition.

16. But the clothes, &c., and other [things] worn by the father, must be given to the person who partakes of food at his obsequies; as directed by Brhaspati:[4] "The clothes and ornaments, the bed, and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the persons who partakes of the funeral repast."

17. If the goats, &c. be unequal in number, a distinct mode of disposal is ordained by Manu:[5] "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the first born."

Special rule for certain animals. CXXVI.

18. Both the *prepared food* and *water*, are to be enjoyed [by all] according to their occasions. *Women*, female slaves. If they be of an odd number, they are to be caused to work [for all] according to their occasions. But if of an even number, they are to be distributed.

Explanation of the former text continued.

1—Mitácharádhyáya leaf 8, page 1st. See Manu, chap. 3d, v. 29. Digest 3d, 604.
2—Chap. 9th, v. 205. Digest 2d, 584. Reports 2d, 57.
3—Chap. 9th, 219. Mit. 272. Jím. Vá. 132. Digest 3d, 373. 4—Mit. 272.
5—Chap. 9th, 119. Mit. 273. Digest 2d, 581.

The father's women reserved.

19. However, if they were set apart by the father, they are not to be distributed, even if of an equal number, by reason of this text of Gautama :[1] No partition is allowed, in the case of women connected [with the father or with one of the co-heirs]."

Explanation of the terms of the text continued.

20. According to the Kalpataru : 'By the term sacrifices and pious acts, [Yoga-kshema] holy councillors, family priests, and the like, are denoted.' But Laugakshi says :[2] "The learned have named a conservatory act, kshema ; and a sacrificial one, yoga : both are pronounced indivisible : and so are the bed and the chair." In this place, a conservatory act, means [construction of] tanks, gardens, and the like : a sacrificial one, a grand sacrifice, a feast to Bráhmans, and the like. The meaning is this : Whatever property is, with consent of all whilst in a state of unity, set apart for this purpose, and kept by one individual, with that very property that act of religion shall be executed, by that same individual, and by no other : Neither shall all join for the purpose. *The common way*, the way to the house or the like, also land for a cattle pasture, and the like.

A text of Çankha and Likhita and of Vyása, explained.

21. As for this text of Çankha and Likhita :[3] No division of a dwelling takes place ; nor of water-pots, ornaments, and things not of general use :" and this of Vyása :[4] " A place of sacrifice, a field, a vehicle, dressed food, water, and women, are not divisible among kinsmen, though [transmitted] for a thousand generations," whereby they declare the impartible nature, both of a *dwelling* and a *field*, they have reference to a religious foundation, and land for cattle pasture, and the like ; [or else] to the prohibition of the partition, by the Kshatriya or other [son of a Bráhman by women of the other tribes,] of these two things, obtained [by the Bráhman] by acceptance of donation ; because it has been already noticed as forbidden.[5] Or [thirdly], it may refer to a partition of even these two things, when of little price, at a valuation, and not by actual division of them.

CXXVII.

Rules for appropriating certain things of an impartible nature.

22. Brhaspati declares a distinction, in regard to clothes and other matters :[6] " They by whom it is affirmed, that clothes and the like are indivisible, have not proved that the collected wealth of opulent men, their vehicles and ornaments, shall not be divided ; property held in common [would be] unemployed, for it cannot be given to one [in exclusion of another] : therefore it must be divided

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1—Mit. 274. Jím. Vá. 132-3, notes.
2—Mit. 374, Jím. Vá. 132-3, notes.
3—Jím. Vá. 133. Digest 3d, 372.
4—Jím. Vá. 133. Digest 3d, 375.
5—Ante section 4th, para. 28.
6—Digest 3d, 378-9.

by [some mode deduced from] reasoning; else it would be useless. By the sale of clothes, and ornaments; on the recovery of a written debt; by compensating the dressed food with [an equal allotment of] undressed grain; an [equitable] partition is made." "Water drawn from a [single] well or pool, shall be taken by turns: Let a [single] female slave be successively employed by co-heirs in their respective houses, according to their several shares; if numerous, the slave shall be distributed in equal allotments: such is the law in respect of female servants. A bridge and a field shall be shared [by co-heirs] in due proportion: and the pasture ground for cattle shall be used by the co-heirs in proportion to their allotments." *On the recovery*, meaning, by levying it from the debtor.

Other articles of a like nature noticed.

23. Kátyáyana:[1] "Wealth which has been fixedly assigned for the purpose of religion, and entered in a deed; and likewise water; slaves also, and such fixed property [or a corody, nibandha] as has gone in order of descent; clothes that have been worn, and ornaments, do not resemble [divisible effects]. According to the time they have been enjoyed, even so let them be made use of [in turns] by the brothers." *Wealth*, means such as has been set apart as the share [to be expended for] religion, and so entered in a deed. *Water*, contained in wells or the like. *Fixed property*, a means of livelihood [vritti.] *Do not resemble*, [that is, are] unfit for partition.

CXXVIII.

Division of common property fraudulently concealed or withheld.

24. The division of property, concealed by deceit from the other brethren, is thus explained by Yájñavalkya:[2] "Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule." *Effects, withheld*, whether by the eldest, younger, or other brother, among the co-heirs; for thus says Manu;[3] "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."

By any of the co-heirs whomsoever.

25. In this place, also, the term *eldest brother*, is used merely to denote the heirs generally, by the argument exemplified in the loaf and staff;[4] and the meaning is: 'If blame attaches even to the eldest, how much more to the younger ones?' Even so Gautama:[5] "Him indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson." Whoever debars, or excludes from participation, an heir, or person entitled

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1—Digest 3d, 375. The translation is altered to suit the gloss.

2—Colc. Mit. 293. Jím. Vá. 230. Digest 3d, 397.

3—Chap. 9th, 213. Mit. 294. Digest 2d, 564.

4—Mit. note to page 294.

5—Mit. 294, [from which this appears to be a passage of the Vedas:] The subsequent gloss is all, except a few words, a transcript from the Mitákshará.

to a share; he, being thus debarred of his share, destroys that person, who so debars him of his right; or if he do not destroy him, he destroys his son, or his grandson.

A fresh partition of it ordained.

CXXIX.

26. Nárada: "That wealth, which has been acquired by a man after separation, belongs to himself alone: what has been recovered, after being seized or lost, and the before mentioned, [property] may be afterwards [divided]." *Before mentioned*, as [property] concealed by any one, among the co-heirs. *May be afterwards*,—divided; is wanting [to complete the sense.] Manu:[1] "When any common property whatever, is brought to light after partition has been effected, that is not considered a [fair] partition: it must even be made over again."

Means for ascertaining a disputed partition.

27. Yájñavalkya[2] states the modes of decision in case of denial of partition made by any one: "When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, and witnesses; and by written proof, or by house or field separately possessed." From the term, *separately possessed*, we must understand it of house or land separately given [to each,] from the connexion between the adjective, and the thing denoted by it. Nárada also says:[3] "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs."

The exercise of religious duties another mode of proof.

28. The same author says:[4] "The religious duty of unseparated brethren is single. When partition has indeed been made, religious duties become separate for each of them." Here the term *unseparated*, is intended even to denote the condition, whilst the substantive, *brethren*, is [merely] a general term, of which the condition is so denoted. By this [reasoning,] in every unseparated family, of whomsoever it may consist, father, grandfather; son, son's son; paternal uncle, brother, brother's son, or other [member], the religious duty is even single.[5]

The performance of religious duties in a family explained.

CXXX.

29. Here again, as, in the unity of place, time, agent, and the like, one agent is by reasoning obtained for several causes, as supporting several parts of one act; so even, we may understand from the text, that there may be distinct acts, of agents [otherwise] unseparated. Hence all those religious acts required for performance of sacred, as well as of more common rites, even of unseparated brethren, are separate for each, in manner of the distinctions

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1—This text is not found in the Institutes.

2—3—Cole. Mit. 376. Jím. Vá. 236. Digest 3d, 407-414. Reports 1st, 161-211-213.

4—Mit. 377. Digest 3d, 417. Reports 1st, 161-211. 5—Reports 2d, 57.

in the nature of a consecrated and a common fire, and the like, though mutually connected. Even so the Çráddha also, of the paternal uncle, brother, son, or other [dying without a son] at the Amávásya, and other [seasons], is even separate, by reason of the separation of the deified [person from the párvaṇa rite]: But the çráddha, &c. of brothers [dying] without [maintenance of] a sacred fire, is to be executed by one instrument [or agent] only, because all the deified persons are conjoined. In case of separation of place, by residence abroad, the çráddhas are even separate. The [extra] acts with the fire, requisite for the rites of those who maintained a sacred fire, also, are even separate; but the worship of the household deities, the Vaisvadeva and other rites, are to be done by one agent only. Even so Çákala says:[1] "Residing with one dressing of food, worship of a single household deity, and moreover one single sacrifice at meals to the viçvadevas, or manes, shew unity. In a family of divided brethren, these acts are performed in each house separately."

Two texts of Açvaláyana quoted.

30. As for the text of Açvaláyana, as quoted in the Párijáta: "Of those who reside with one dressing of food, even if [previously] separated, O my lord, one alone shall perform those four sacrifices, which follow the Vákyagnya; if men of the twice-born classes, unseparated as well as separated, have their meal dressed separate, let them each celebrate these sacrifices distinct, previous to taking their food, day by day:" it has reference to persons reunited [after separation], because this conclusion is clearly ascertained, from the one phrase, "of separated persons also, residing with one dressing of food," and the other: "of separated, and unseparated [coparceners," in the text].

And examined, though of doubtful authority.

CXXXI.

31. Therefore, in case there be a separate dressing of food, among reunited [coparceners], the great sacrifices [Mahá yagnya] are separate. The Vákyagnya, is the Brahma yagnya. The phrase, *those which follow it*, is here the atadguṇa form of a Bahuvrihi compound; [not being a component part of that which it denotes]; or if it were of the other form, [being a component part], the phrase, 'the Vákyagnya, and the rest,' would be void of meaning; for the ascertainment of all the four is certain, even from the fact that: In giving up the first of the five ceremonies, there would be no attainment of the end. Hence, the Brahma yagnya is to be even separately done. But [after all], these two texts are not respected by venerable authors.

The same objection applied to some texts quoted in other books.

32. And these texts also, recorded in the Dharma Pravṛtti: "Sons unseparated must celebrate one anniversary Çráddha for both parents: if they be in different countries, they may perform separately [it, with] the Darçha [or Amávásya] and monthly Çráddhas. If they be abroad in, other towns, unseparated

1—Reports 1st, 212.

brethren are, even at all times, to celebrate the Darsha and monthly Çráddha for both parents, each separately : When unseparated, but resident in different towns, each living upon the wealth acquired by himself, those brothers should celebrate the Çráddha and Párvaṇa, each separately," with the following one in the Smṛti Samuchchaya ; The Viçvadeva sacrifice, and the anniversary Çráddha, as well as the Mahálaya [or Pitra paksha] rite, are, in case the family be spread abroad, to be celebrated separately, and the Darsha Çráddha in like manner :" are by a certain author, said to have reference to reunited brethren. residing in different countries. The correct opinion however is, that these even are all unauthentic.

33. Or else, if there be unity of place, time, agent, and the rest, the instrumentality of one only, is found by reasoning. But where the agents are different, and the same results by the text itself; for, in a difference of place, there is a want of concurrence both of the text and reasoning too ; and therefore, the separate performance of Çráddhas and other rites, by any one of them whomsoever, is founded in reason : which is my conclusion.

Conclusion drawn.

34. Nárada declares other signs also, of partition :[1] "Separated but not unseparated, brethren, may reciprocally bear testimony, become sureties, bestow gifts, and accept presents." "Gift and acceptance; cattle, grain, houses, land, and attendants, must be considered as distinct among separated brethren, as also the rules of gift ; income, and expenditure." Those by whom such matters are publicly transacted with their coheirs, may be known to be separate, even without written evidence." *Gift and acceptance* have reference to borrowing transactions. These very terms, 'gift and acceptance,' are repeated in the second text[2] for the sake of clearness. Acceptance of cattle and the rest among separated persons, accomplished by each apart, is even the means of generating [sole] ownership but among unseparated brethren, acceptance by one alone is the origin of the [joint] ownership of the others also. *The rules of gift*, written deeds, and the like. *Income*, entry [or accumulation] of principal and interest, or the like, Bṛhaspati :[3] "They who have their income, expenditure, and wealth distinct, and have mutual transactions of money lending, and traffic, are undoubtedly separate." Yájñavalkya :[4] "It is declared, that brethren, husband and wife, father and son, cannot become sureties for each other before partition ; nor reciprocally lend, nor give evidence for each other.

Other signs of partition enumerated. CXXXII.

1—Ante Chap. 2d, Sect. 3d. Reports 1st, 105-211. Mit. page, 377. Jím. Vá. 237. Digest 3d, 497-417.

2—Or the first, as here transposed, evidently by the fault of the transcribers. The reading of the last text is different, the 'rules of gift,' for 'diet.'

3—Jím, Vá, 238. Digest 3d, 427, Reports 1st, 161. 4—Digest 1st, 228.

35. In default of all these signs of partition, ordeal [must be resorted to], since the very same author has declared :[1] "In the absence of all these, a divine test is prescribed." As for the text of Vṛddha Yájña-valkya : "In doubts upon the subject of partition, the division must be proved by the kinsmen, witnesses, and written deeds : proof by ordeal is not to be :" it has reference to the existence of other signs.

In default of any marks, ordeal permitted.

CXXXIII.

36. In case also of total failure in ascertaining whether they were separated or united, a fresh partition is enjoined by Manu :[2] "When there is a doubt of partition among the co-heirs, a partition must be again made, even though they have taken separate places of abode." Nárada states the duties of separated coheirs :[3] "When there are many persons, sprung from one man, who have their [religious] duties [dharmá] apart, and transactions [kriyá] apart, and are separate in the materials of work [karma guṇáḥ], if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please : for they are masters of their own wealth." *Duties ;* ceremonials, that is, the five great sacrifices, [para. 31,] and the like. *Transactions*, commerce, and the like worldly acts. *The materials of work*, household necessaries, and the like, as the means of performing the acts [of the householder]. By the separate existence of these, a partition is manifested. The sense is, that they, so separated, may [each], even without the consent of the others, make the gift, sale, or other alienation [of their respective shares].

A fresh partition to be made on failure of all attempts to discover the fact.

37. As for the text of Bṛhaspati :[4] "Separated heirs, as those who are unseparated, are equal in respect of immovables ; for one has not power over the whole, to give, mortgage, or sell it ;" according to Madana, it is for putting a stop to the right, among coheirs, even separated as to their shares of [moveable] effects, [though unseparated in other respects], to dispose, by gift or other mode, without [general] consent, of grain, or the like, the produce of undivided fields, or other [fixed property]. According to Vijñáneçvara and others, it is for the sake of obviating any future doubt, whether they be separated or united ; for, by the consent of those unseparated, the facility of the transaction is ensured.

A Text of Bṛhaspati explained in two ways.

CXXXIV.

38. The same author,[5] with reference to one separated by his own wish, and afterwards disputing, says : "If he subsequently dispute a distribution, which was made with his own consent, he shall be compelled by the king to abide by his share, or be amerced if he persist in contention." *Contention*, pertinacious pursuit.

Punishment for disputing an amicable division.

1—Ante Chap. 1st, Sec. 2d, para. 1st. 2—Not found in the Institutes.

3—Jím. Vá. 333. and notes. Digest 3d, 430.

4—Mit. 257, Jím. Vá. 31. The text is, in the first anonymous, and in the second, assigned to Vyása. 5—Digest 3d, 399.

SECTION VIII.

On Obstructed Heritage, or Succession,—[Sapratibandha Dáya.]

1. Now, of the degrees of succession to obstructed heritage. Yájñavalkya thus relates the order of succession to the wealth of one [dying] separated, and not re-united :[1] "The wife and the daughters also ; both parents ; brothers likewise, and their sons ; gentiles, cognates, a pupil, and a fellow student : on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and] classes."

Order of succession to one dying finally separated, without male issue.

2. The wife, if faithful to her husband, takes his wealth ; not if she be unfaithful ; for it is declared by Kátyáyana : "Let the widow succeed to her husband's wealth, provided she be chaste." So Hárita says :[2] "If a woman becoming a widow in her youth, be headstrong, [suspected of incontinence] a maintenance must in that case be given to her, for the support of life." Prajápati :[3] "Dying before her husband, a virtuous wife partakes of his consecrated fire ; or if her husband die [before her, she shares] his wealth ; this is a primeval law." *Consecrated fire,* all the [five sacred] fires. The same author says :[4] "Having taken his movable and immovable property, the base and the precious metals, the liquids, and the clothes ; let her duly offer his monthly, half-yearly, and yearly funeral repasts ; with presents offered to his manes, and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents, and daughter's sons, the childern of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females, [of the family]." *Base metals,* namely, tin, lead, and the like.

First, the wife if faithful.

CXXXV.

3. As for this text of Bṙhaspati :[5] "Whatever property a man possesses, of every kind, after division, whether mortgaged, or other, that the wife, [in whatever form married, jáyá] shall enjoy after the death of her husband, with the exception of fixed property. Even if virtuous and if partition have been made, a woman is not fit to enjoy real property," it, according to the Smṙti Chandriká, refers to a wife who has not [even] a daughter ; for a woman having a

A text of Bṙhaspati as excepting fixed property explained away.

1—Mit. 324. Jím. Vá. 160. Digest 3d, 457, Reports 1st, 160-292—2d, 427-670. et. al.
2—See post para. 9, and references. 3—Bṙhaspati, Jím. Vá. 158-9, Digest 3d, 458.
4—Our Author varies the reading, omitting mention of grains, after metals, and reading "ábdikam yearly," for "ádikam, other."
5—Reports 1st, 58—2d, 666.

daughter obtains the fixed property also. Mádhava, again, considers it to relate to the prohibition of sale, or other transfer, of real property, by a widow, without concurrence of the heirs.

A text of Kátyáyana limiting the widow's power, prohibits only improper alienations.

4. As for this text of Kátyáyana: "After the death of the husband, the widow, preserving [the honor of] the family, shall obtain the shares of her husband, so long as she lives: but she has not property [therein, to the extent of] gift, mortgage, or sale:" it is a prohibition of gift of money, or the like, to the Bandí, Chárana, and the like [swindlers]. But gift for religious objects [not visible], and mortgage of the like, suitable to those objects, may even be made, since fixed and moveable property are both noticed, in the above quoted text: "Having taken," &c. [para: 2nd] and from this of Kátyáyana himself: "A widow, actively engaged in meritorious observances and fasts, constant in the duties of her widowhood, intent upon restraining [her passions], and making holy gifts, even if wanting a son, shall reach the heavenly abodes."

Two other texts referred to kept women.

CXXXVI.

5. Moreover, the text of the same author.[1] "Heirless property goes to the king, deducting however a subsistence for the females, as well as the funeral charges: but the goods belonging to a venerable priest [Çrotriya] let him bestow on venerable priests:" and further that of Nárada:[2] Except the wealth of a Bráhmana [property goes to the king on failure of heirs]. A king, who is attentive to the obligations of duty, should give something as maintenance to the women of such persons. The law of inheritance is thus declared:" have both reference to women set apart,[3] because the term, 'lawful wife' [Patní], is not mentioned.

And a third, to the widows of united or re-united persons.

6. But as for this of Nárada:[4] "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance," it relates to the women of one dying unseparated, [or] re-united, because the reading [of the text] is upon that very subject, according to Madana.

A text of Kátyáyana examined.

7. Kátyáyana: "But if her husband have departed for heaven, the wife obtains food and raiment: Or [too], if unseparated, she will receive a share of the wealth, so long as she lives." The term *unseparated* is also an illustration of a re-united family. The word 'but [too]' has here the

1—Mit. 334.
2—Mit. 335. Jím. Vá. 177. Digest 3d, 540.
3—Ante Sec. 7th, para. 19.
4—Mit. 236. Jím. Vá. 177. Digest 3d, 474.

sense of 'or.' From this results a double object of the text, according to Madana: the last [hemistich] referring to a wife lawfully married; the first, to a woman set apart. The foundation of this exposition is to be considered. But [indeed] the same author clearly explains the real meaning: "She who is intent upon her service to her venerable Guru, is fit to enjoy the share assigned: should she not perform her proper duty, he shall order her [only] clothes [already] worn, and a morsel of food." *Her Guru*, her father-in-law, and other [venerable relatives]. At his pleasure, she may receive a share: otherwise, merely food and raiment. This is the meaning.

CXXXVII.

8. The same author says:[1] "But a wife, who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property [*strídhana*]." As for this text: "Let them follow this very same rule also, with females degraded [by crime]: but clothes and grain are to be given to her, and let her be caused to reside within the house," it has reference to a husband [living], says a certain modern compiler. This very rule that is, regarding the divorce of a degraded [wife].

A widow suspected of incontinence gets only a maintenance.

But a faithful one gets the estate. If more than one, they divide it.

9. Even a mere maintenance is for a woman suspected of incontinence, from this text of Háríta: "If a woman, becoming a widow in her youth, be headstrong [suspected of incontinence], a maintenance must in that case be given to her for the support of life." *Headstrong*, according to the Mitákshará,[2] means 'suspected of incontinence.' This establishes our argument [The wife, if faithful, &c., para. 2nd], that a lawfully married wife, restrained [in her conduct], takes the wealth. But if there be more than one, they will divide it, and take shares.

The daughter, or daughters.

10. In default of the wife, the daughter succeeds. Even as Manu says:[3] "The son of a man is even as himself, and the daughter is equal to the son: how then can any other inherit his property, but a daughter, who is as it were himself." If there be more daughters than one, they are to divide [the estate], and take [each a share.]

Unmarried before married ones.

11. In a case also, where some of them are married, and some unmarried, the unmarried ones alone [succeed], by reason of this text of Kátyáyana:[4] "Let the widow succeed to her husband's estate, provided she be chaste; and in default of her, the daughter inherits, if unmarried."

1—Digest 3d, 585, see post, Sec. 10th, para. 12.

2—Cole. Mit. page 340. Digest 3d, 479. Reports 2d, 457.

3—Chapter 9th, 130, Jím. Vá. 184. Digest 3d, 166. Reports 1st, 31.

4—Mit. 326. 341. Ante para. 2.

12. Among the married ones, when some are possessed of [other] wealth, and others are destitute of any, these [last] even will obtain [the estate], from this text of Gautama:[1] "A woman's property goes to her daughters, unmarried, or unprovided for." *Unprovided*, destitute of wealth. Those acquainted with traditional law, hold, that the word, '*woman's*' [wife's] includes the father's also.

If married, the poorest of them.

CXXXVIII.

13. In default of daughters, the daughter's son [succeeds], by the text of Vishṇu:[2] "If a man leave neither son, nor son's son, nor [wife, nor female] issue, the daughter's son shall take his wealth. For in regard to the obsequies of ancestors, daughter's sons are considered as son's sons.

The daughter's son.

14. In default of the daughter's son, comes the father; in default of him, the mother; even as Kátyáyana says:[3] "The widow, being a woman of honest family, or the daughters, or on failure of them, the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue:" and likewise Vishṇu[4] "The wealth of him who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; in default of daughters, it devolves on the daughters' sons; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them it descends to the brother's sons; if none exist, it goes to the relations [sakulya]."

The father, and, after him only, the mother.

15. As for the opinion of Vijñáneçvara:[5] 'that in the complex term parents,' the omission of one term and retention of the other [ekasheça] constitutes an exception to the regular compound [dvandva], and although the order [of construction] be not certainly defined, yet the meaning [in favour of the mother's priority] may be understood, because the word 'mother' stands first in the proper form of the compound; also, from the consecutive order of the particular compound ['mother and father'] being the rule, of which the omission of one term and retention of the other ['parents'] is the exception, and since the father is a common parent to many sons, whilst the mother is not so; therefore, of the two, the mother in the first instance takes the estate, and no failure of her the father,'[6] it must be set aside, as contrary to

The doctrine of the Mitákshará disputed.

1—Mit. 267-342-69. Jím. Vá. 82. Digest 2d, 588.

2—Mit. 343 Jím. Vá. 191. 3—Mit. 320.

4—Mit. 326-350 note. Jím. Vá. 160-194-196. Digest 3d, 489. The mention of 'daughter's sons,' is omitted in the Mit. and even in some copies of Jím. Vá.; and our Author leaves out the name of "kinsmen" before relations.

5—Mit. 343.

6—The remarks on this intricate and contested subject in the notes to the Mitákshará, page 345, are too valuable and apposite to be omitted here. "The commentator [on the Mitákshará] Bálambhatta, is of opinion, that the father should inherit first and

those texts : for the word 'mother' being placed first, in the proper form of the compound, is an exception to the general rule, in regard to the option allowed for the omission of one term and retention of the other ; and further, there is a want of proof, in fixing the proper order according to the diffusion or condensation [of the parental power].

CXXXIX.

16. In default of the mother, the uterine brother ; in default of him, his son. As for the declaration of Vijñáneçvara, and others,[1] 'that in default of the uterine brother, those by different mothers succeed ; on failure of them, the sons of the uterine brother,' it is wrong : since the term 'brother' has the force of 'whole brother,' and a secondary quality is implied by the term, 'brother by another mother ;' and hence an exposition in favor of both, is contrary [to reason]. Some however say,[2] upon the term 'brothers :' That since : "Brothers and sisters, with sons and daughters," is one of the maxims [of Páṇini] and the term 'brothers and sisters,' resolves into [the complex term] 'brothers,' by the omission of one term and retention of the other, in a compound of two species : therefore, in default of brothers, the sister [succeeds] :' But it is not so, because there is a want of proof [of the correctness] of omitting one term, and retaining the other, in a compound of two species.

The uterine brother ; then his son. The doctrine of the Mitákshará, in favour of the half-brothers, disputed.

17. The sons of a brother, also, if themselves fatherless at the time of the paternal uncle's death, provided they are capable of understanding [the use of] property, will divide the father's share with their father's other brothers, after the example :[3] "Among grandsons by different fathers, the allotment of shares is according to the fathers."

The brother's sons share with the other brothers.

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afterwards the mother ; upon the analogy of more distant kindred, where the paternal line has invariably the preference, before the maternal kindred ; and upon the authority of several express passages of law. Nanda Pandita, author of commentaries on the Mitákshará, and on the institutes of Vishṇu, had before maintained the same opinion. But the elder commentator of the Mitákshará, Visveçvara Bhatta, has in this instance followed the text of his author, in his own treatise entitled Madana Párijáta, and has supported Vijñáneçvara's argument, both there and in his commentary named Subodhini. Much diversity of opinion does indeed prevail on this question. Çríkara maintains, that the father and mother inherit together : and the great majority of writers of eminence [as Aparárka and Kamalákara, and the authors of the Smṛti Chandriká, Madana Ratna, Vyavahára Mayúkha, &c.] gives the father the preference before the mother. Jímúta Váhana and Raghunandana have adopted this doctrine. But Vachespati Misra, on the contrary, concurs with the Mitákshará in placing the mother before the father ; being guided by an erroneous reading of the text of Vishṇu, as is remarked in the Víranirodaya. The author of the latter work proposes to reconcile these contradictions by a personal distinction : If the mother be individually more venerable than the father, she inherits ; if she be less so, the father takes the inheritance." In practice however, the question can never occur, unless the deceased had separated from his father, which is seldom if ever done.

1—Mit. 347. 2—Mit. 346 note

3—Ante Section 4th, para. 20th, see Mit. 348. Reports 2nd, 29.

18. In default, of brother's sons succeed the gentile relations, [Gotraja] within the seventh degree, being connected by funeral oblations, [sapinda]. The first among these is the paternal grandmother, from this text of Manu :[1] "The mother also being dead, the father's mother shall take the heritage, [on failure of brothers and nephews.]" Even though she is [here] mentioned immediately next to the mother, still she is to be entered at the end, after the brother's sons, after the manner of the entry of [the çráddha for] incidental persons at the end, [as deceased acquaintances, &c.], because the placing her in the middle [is in violation] of the rank fixed for each, as far as brother's sons. [para. 1.]

The gentile relations; of whom, the father's mother is first, coming in this place, and not next to the mother.

19. In default of her, comes the sister; under this text of Manu[2] "To the nearest sapinda, [male or female], after him in the third degree, the inheritance next belongs:" and this of Brhaspati :[3] "Where many claim the inheritance of a childless man, whether they be paternal or maternal relations, [sakulyá], or more distant kinsmen [bándhava], he who is the nearest of them shall take the estate." And [the next rank is] her's, both from her being begotten under the brother's family name, and there being no further reservation with respect to the gentile relationship [Gotrajatva]: it does not particularly specify the same gentile kindred. Neither is she mentioned in the text as the occasion of taking the wealth; [but as next of kin, she succeeds].

Then the sister.
CXL.

20. On failure of her, the paternal grandfather, and half-brother are both to share and take it, their propinquity being equal, since the [deceased person's] own father was begotten by the former of those two, and was himself the begetter, of the latter, as well as of the deceased. The propinquity being similar, and there being a want of any other notice, however slight, beyond the order of the text, or the like, therefore, in other cases also, we must act even thus. For this reason, in default of these two, the paternal great-grandfather, the father's brother, and the sons of the half-brother, shall take and share it.

The father's father, and the half-brother share between them; after them, the paternal great-grandfather, the father's brother, and the sons of the half-brother, share alike.

21. All the sapindás and the samánodakas follow, in the order of propinquity, as enumerated by Manu :[4] "Now the relation of the Sapindás, [or men connected by the funeral cake], ceases with the seventh person, [or in

The Sapindás and Samánodakas.

1—Chapter 9th, 217. Mit. 326-346-49, Jim. Vá. 194, Digest 3d, 503. Reports 1st, 190-292.

2—Chapter 9th, 187, Mit. 345-7-51, noticing our Author. Jim. Vá. 215-17. Digest 3d, 525. Reports 1st, 70-72.

3—Digest 3d, 532.

4—Chap. 5th, 60, Jim. Vá. 173-217. Reports 1st, 190-293.

the sixth degree of ascent or descent,] and that of Samánodakas, or those connected by an equal oblation of water, ends only when their births and family names are no longer known." *The seventh,* must be understood as of him passed away.

The cognate kindred, of the deceased, of his father, and of his mother.

CXLI.

22. If no distant kinsmen [Sodaka] exist, then come the cognate kindred [Bandhu], who are thus specified in another Smṛti:[1] "The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own mother's brother, must be considered as *his own* cognate kindred." The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his *father's* cognate kindred." "The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncles, must be reckoned *his mother's* cognate kindred." Here also, the order [of succession] is even the order of the text.

An argument against their equal right over-ruled.

23. If on the other hand [it be said]: 'As the right of the wife and all the others, in succession to the wealth, is derived from the deceased himself alone, even so that of the cognate kindred is derived in like manner from him: What title then can the cognates of the father or of the mother [of the deceased] have to the wealth? The term 'sons of the sister of the father's father,' and the like, is only for the sake of shewing the connexion between the name and person, and does not mean a connexion with the wealth.' [I answer]: Even without that text, if, after the example of 'the father's maternal uncle, his paternal uncle,' and the rest, in like manner also, the continuous application of that term [cognate among the father's and the mother's cognates be held to exist, by conjunction [of kin through some intermediate person], we should have the absurdity of rendering unintelligible, the connexion between name and persons. Hence, the text is intelligible only by the acceptation of paternal and maternal cognates, in considering that subject in the rules of succession to property. The conclusion is, that the very same applies, by the declaration of the cognate affinity, in the rules for impurity and other [mutual obligations].[2]

The preceptor, pupil.

24. In default of cognate kindred, the preceptor; on failure of him, the pupil; by this text of Ápastamba:[3] "If there be no male issue, the nearest kinsman inherits: or, in default of kindred, the preceptor; or, failing him, the disciple."

And fellow student, a Çrotriya,

CXLII.

25. In default of the pupil, the fellow-student is the successor; in default of him, a Çrotriya; from the text of Gautama:[4] "Venerable priests [Çrotriya] should share the wealth of a Bráhmaṇa, who leaves no issue."

1—Mit. 352. Digest 3d, 535. Reports 1st, 107-293.

2—See Mit. 352, note where our Author's doctrine is quoted. 3—4—Mit. 353.

26. In default of such an one, any other Bráhmaṇa, by reason of this text of Kátyáyana :[1] "But in default of all those the lawful heirs are such Bráhmans, as have read the three Vedas, as are pure [in body and mind], as have subdued their passions. Thus virtue is not lost."

or any Bráhmana, if the deceased were a Bráhman.

And Nárada says the same :[2] "In every case, the king may take the wealth of a subject dying without an heir, except the estate of a Bráhmaṇa: for the property of a Bráhmaṇa dying without an heir, must be given to Çrotriyas.

In all other cases, the king.

27. Bṛhaspati :[3] "If Kshatriyas, Váiçyas, or Çudras, die childless, leaving neither wife nor brother, let the king take the property; for he is indeed lord of all.

28. Yájñavalkya[4] states a distinction with regard to the estates of ascetics, and the like : "The heirs of a hermit, of an ascetic, and of a student [Brahmachári] are, in their order, the preceptor, the virtuous pupil, and the spiritual brother, and associate in holiness." *The student*, a perpetual one, for the father and the rest even are [the natural heirs] of a temporary student. *The spiritual brother*, one who has agreed to bear the appellation of 'brother.' *An associate in holiness*, one appertaining to the same hermitage. 'Being a spiritual companion, and belonging to the same hermitage' is a compound of nouns designating the same person,[5] [Karmmadhárya samása]. According to Vijñáneçvara, [the succession] of preceptors and the rest, is in the inverse order. But Madana prefers the direct order, from this text of Vishṇu :[6] "The spiritual preceptor shall take the property of a deceased hermit."

The heirs of hermits, ascetics, and perpetual students specified.

29. The funeral rites of the deceased, as far as the tenth day's rites inclusive, must be performed by that person [among the heirs] who takes the estate, whoever it may be, [from the wife, downwards] even as far as the king himself. Even thus Vishṇu says :[7] "He who is heir to the estate, is the giver of the funeral oblations." This same matter has been fully explained by me in the Çráddha Mayúkha, in determining the order of those entitled to perform them.

Whoever takes the estate, as heir under this above order, is bound to perform the funeral rites of the deceased.

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1—Manu. Chap. 9th, 183. Mit. 353.
2—Digest 3d, 538. where it is assigned to Devala.
3—Jím. Vá. 177. Digest 3d, 538.
4—Mit. 354. Jím. Vá. 223. Digest 3d, 456.
5—See note to Datt. Mím. page 102.
6—Digest 3d, 548.
7—Digest 3d, 543. Smṛti.

SECTION IX.

[*Of Re-union after Partition,—Saṁsrishṭa.*]

Re-union after separation, defined.

A restriction by the Mitákshará to three persons, over-ruled.

1.—Now we proceed to expound the doctrine of re-united co-parceners. On this subject, Bṛhaspati defines re-union :[1] "He who, being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united." This re-union, according to the Mitákshará and others, can only take place with a father, brother, or paternal uncle, not with others, because no others are included in the text. But the proper sense is, that this [re-union] arises even from the joint location of the makers of the [first] partition. For the words father, and the rest, are merely as a part to denote the whole, of the persons who make the partition, after the example : "He measures the altar, half within, and half without :" otherwise, there would be a division of the text itself [into three]. Hence, re-union may take place with a wife, a paternal grandfather, a brother's grandson, a paternal uncle's son, and the rest also. "He who, being once separated [from the co-heirs] dwells again [in common, is termed] re-united :" from joint location [of such an one], the sense of separated brothers, [one's own] sons, and the like, does not result. [When two settle thus] : 'The present, of future, wealth of us two, is common property, until we make a partition a second time,' when there exists such a sign, either by an understanding or expressed wish, it is an union.

Re-union permitted, with any former co-parcener.

But the shares at a second partition must be equal.

Though the contributions were unequal.

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2. In this place, Manu states a distinction :[2] "If brethren, once divided and living again together as parceners, make a second partition, the shares must in that case be equal : there is not in this instance any right of primogeniture [Jyeshṭyam]." Here, some say : 'that, the unequal distribution being set aside by the phrase, the shares must in that case be equal, the prohibition of the 'eldest son's right' is repeated [though contrary to rules of composition] for the sake of making it clearly understood, that although there is to be no inequality in making up the share of the eldest, yet in the distribution the shares may be even unequal, when made up of greater and lesser shares, at the time of re-uniting the property.'

1—Mit. 357. Jim. Vá. 228-168. Digest 3d, 512. Our Author differs from all, in his doctrine.

2—Chap. 9th, 210. Mit. 369. Jim. Vá. 227. Digest 3d, 475.

3. But since the term, 'eldest son's right' [Jyeshtyam] and the like, is merely a declaration of the general meaning; therefore, if [the contributions to] the wealth were greater and less, still the share of each must be equal. And the same is the popular practice. Hence, as the foundation of the practice is derived from this text, any supposition of a declaration contrary thereto, is at variance with reason; for another author has said: "The body of the law, like Grammar, furnishes, for the most part, the foundations of popular customs."

Still the shares at a second partition must be alike.

4. Brhaspati:[1] "If any one of the re-united brethren acquire wealth by science, valour, or the like [with the use of the joint stock], two shares of it must be given to him, and the rest shall have each a share." According to Madana, the meaning of the text is, that a double share being established for the acquirer, by the phrase, 'to the acquirer, two shares;' then, in a partition among [unseparated] brethren not re-united, he gets two shares, only in what he has acquired without detriment to the father's wealth;[2] but in a [fresh] partition among re-united brethren, he gets two shares of what was acquired by him, even if at the detriment of the re-united property.

In certain gains made even with aid from the common stock, the acquirer gets a double share.

5. Yájñavalkya[3] enumerates the order of those entitled to succeed to the wealth or one re-united: "As of a re-united [coheir], the re-united [coheir], so, of the uterine brother, the uterine brother," which is an exception to the regular succession [failing male issue], of. "The wife, the daughters," and the rest.[4] Hence, this meaning results, that it is the re-united parcenership, and not the condition of the wife [the daughter], and the rest, which causes a preponderance of the right of inheriting the property of a re-united parcener.

The order of succession to one dying after re-union, is an exception to that of obstructed heritage. [Sec. 8th.]

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6. As for the doctrine of Vijñáneçvara, Madana, and others 'That this also refers to one devoid of son, grandson, or great-grandson, both from the maxim 'that the subject forming an exception be of a nature similar to that [of the rule] which is rejected,' and from the want of connexion between the terms of the former text:[5] "Of one who departed for heaven leaving no male issue," and the present one: therefore, even though there exist a wife, or other un-reunited near heir, of such any one dying after re-union,

The doctrine of the Mitákshará and others, against the wife, &c., controverted.

1—Jím. Vá. 165. Digest 3d, 551. 2—See Sec. 7th, para. 6.

3—Mit. 356. Jím. Vá 200. Digest 3d, 507. A literal and connected version of this text, is required in this place, to understand clearly the succeeding argument: "Of the re-united [coheir], the re-united [coheir]; so, of the uterine brother, the uterine brother: shall either give up, or shall retain the share," [giving it up] if a son were born of him, or [retaining it] if he died [without one]."

4—5—Section 8th, para. 1st.

still, the others alone who had re-united with him, will take his estate,' it must be considered. Since, [in the second case], there is a want of proof, in the connexion, if the text is to be carried on even without that rule: nor [in the first case], is the complete similarity [of the rule and exception] to be looked for, in all cases of share, but only in a few points; [as may be instanced] from the nature of a 'deceased Sapiṇḍa,' where, in default of connexion between the term, 'leaving no male issue,' and that of, 'one who departed for heaven,' they would not find the term, 'of one deceased.' Yet it cannot be so, for that very term is found in the text of Manu, to be presently adduced [para. 13]: "be deprived of his allotment at the distribution, or should any one of them die:" But if connexion [of the terms] be allowed, we should, in the case of sons, some re-united with the father, and some not re-united, or of grandsons so situated with sons, have them shares sharing equally, which is a contradiction: and in the case of one having male issue, this text does not apply.[1]

7. And here again, [such connexion] is at variance with that practice, the origin of which may be demonstrated to be in the general code of Law, [para. 3]. But [should it be said], 'though the text be inapplicable, in the case of one having male issue, in default of such connexion; yet if there be an assemblage of sons not re-united, with brothers re-united, or the like, then the brothers and others [re-united] would obtain the wealth, not the sons or others [not re-united],' it is not so; because in the last hemistich of the [above] text, it will be shewn to be unworthy of respect.

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8. The sense of the first quarter [of the whole text]: "Of a re-united [coheir], the re-united [coheir]," has an exception in the second quarter], of the uterine brother," with which the other is connected. The meaning therefore is, that, in a case embracing both whole and half-brothers, all re-united together, only the re-united whole brother will take the wealth of the re-united brother deceased. The last hemistich[2] is as follows: "Shall give up the share, to [a son at any time] born; or shall retain it, if he died [without issue]:" and the sense of it is this: 'If the pregnancy of the wife of a deceased re-united coheir, be unascertained at the time of dividing the [re-united] property, and a son be afterwards born, the paternal uncle or other re-united [parcener] shall give the share to that son; but on failure of him, he [the uncle, &c.] himself shall take it.'

One part of the text explained by the other, to define the rights of the whole with half brothers,

and those of a posthumous son with his uncles.

9. Here, the filial relation alone affords the right of taking the father's share; not the fact of production posterior to the partition, since this cannot cause such a result besides, it creates [unnecessary] prolixity [to

The son, though not re-united, suc-

1—In some of the copies, this sentence is not to be found in this place.

2—Of the text with which para. 5, commenced. Mit. 357, Jim Vá.

ceeds, in preference even to the re-united uncle.

specify: 'subsequently' born], and [thirdly], would have the absurdity of denying the [known] right to a share, in the case of a son produced in another part of the country previous to partition, but unknown [at the time]. Therefore, to the son previously born even, though not re-united, the uncle, or other [parcener] though re-united, shall give his share.[1]

The rights of the whole and half-brother severally discussed.

CXLVII.

10. The same author[2] propounds the right, of an uterine brother not re-united, and a half-brother re-united, in taking shares of the wealth: One of a different womb, being again associated, may take the succession; not one of a different womb, if not re-united: but [a whole brother, if] re-united, obtains the property; and not [exclusively] the son of a different mother." Here, from the terms, *one of a different womb; son of a different mother*, the half-brother alone is not designated, but the paternal uncle, and others likewise, because there is nothing to distinguish such association: for, if otherwise, we should have the absurdity of rendering senseless the union with uncles, and the rest, already established [by the text at para. 1.] And there is a want of any other acts suitable to a state of re-union.

11. *If not re-united*; this term applies to those both preceding and following it as a lamp upon a threshhold [gives light both within and without]. So, the word re-united, by varying the application of it, is to be understood of the whole brother, as entitled by union, both of the wealth and also of the womb. The word *if*, occurring in the former phrase, is to be understood immediately after this, as well as at the end of the text. The word exclusively [even, *eva*] should be supplied.

Exposition of the text.

12. The following are the meanings of the terms of this text: 'One of a different womb,' that is, one of a separate womb; [such], the wife, the father, the father's father, the half-brother, the paternal uncle, and others, if they be re-united, may take the wealth. If not re-united, those of a different womb do not [succeed]. Hence, by reason of the rule respecting fitness and dissimilitude,[3] the re-union of one of a different womb, is declared as the reason for his taking the wealth. A whole brother, termed 're-united,' [by union of the womb], even if not re-united [by union of the wealth], will take the property. By this reasoning, the community of womb alone even, is declared a sufficient reason. So,

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1—This seems likewise to be the doctrine of the Subódhini. Cole. Mit. 358. note.

2—Yájñavalkya Mit. 358. Jim. Vá. 201. Of the readings mentioned there, our Author adopts. 'Nányodaryo dhanam haret, and Saṁsrishṭo nányamátrajah.' The translation of some of the terms is here altered, to suit the gloss.

3—Cole. Digest 1st. 9 note. "In Logic, Anvya, and Vyatireka; the first is the relation of events, of which whenever one occurs, the other also occurs; the second is the connexion of circumstances, of which when one occurs not, the other also does not

one re-united, as possessing union of wealth; but if only born of a different mother, he will not take any thing whatever.

Therefore the whole, and half-brother, or any other re-united persons, share it equally.

CXLVIII.

13. From the above this results, that, the one from his re-union, the other from his community of womb, both jointly share and take it [between them]. Manu [1] specially determines this very principle, in the right of succession among re-united persons: " Should the eldest, or youngest, of several brothers, be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost: but the uterine brothers and sisters, and such as were re-united after a separation, shall assemble together and divide his share equally." *Be deprived of*, by entering another order, by degradation from sin, or the like. *Uterine*, must be joined with brothers, in construction. *And such as were re-united*, that is, the wife, the father, the paternal grandfather, the half-brother, the paternal uncle, and the rest, [para. 1].

Fixed property, the uterine brother takes, concealed wealth and animals, he shares with those re-united.

14. On this point, Prajápati states a distinction : " Whatever concealed wealth is brought to light, becomes the property of the re-united parceners : but lands and houses, those not re-united shall entirely take, according to their shares." *Concealed wealth*, what is capable of being hidden, by depositing in the ground, or otherwise, as gold, silver, or the like. Such, those *re-united*, that is, of a different womb, shall take : but landed property, the uterine brother [takes]. Kine, horses, and other [animals], the uterine and he of a different womb [shall share]. According to Madana, he of a different womb alone, if re-united, will take the houses, horses, and the like ; but it is not so noted in the text.

A case in the Smṛti Chandriká explained as between uterine brothers.

15. According to the Smṛti Chandriká: 'But if there exist only one species of property, out of the [above sources, as] concealed wealth, land, kine, and the rest, the uterine brother alone, even not re-united, takes it.' The proof of this must be considered. Among uterine brothers, if some of them are re-united, but other brothers not, nevertheless, those re-united alone will take the wealth, because community of womb, and re-union, exist as a double cause [of succession]. Even so Gautama : " When a re-united [parcener] dies, his re-united coheir shares his estate," and Bṛhaspati : " Two brothers, who become re-united through affection, [after being separated] share mutually."

CXLIX.

The son, succeeded, in all cases.

16. Here, this is the refined sense : ' A son, whether re-united with his father, or not re-united, shall obtain the entire paternal share, since the power of intercepting the right to take a share, lies in the filial relation.

1—Chapter 9th, 211-12, Mit. 359. Jím. Vá. 210. Digest 3rd, 475.

Those re-united, before others not re-united.

Among [several] sons also, when one is re-united, and the other is not, the re-united one alone [succeeds], by the text [para. 5th]: "Of a re-united [coheir,] the re-united [coheir]."

And the son of one re-united, succeeds before other re-united persons.

17. In a case of re-union, between a father, son, and any other, not being his son, the son alone [succeeds], because the same has already been declared [para. 8th], by the terms: "shall either give up, or shall retain, &c."

In other cases, the parents; and first of them the mother.

18. In an assemblage of father, brothers, paternal uncles, and others, not being sons, re-united, the parents alone [take it]. Of them again, the mother is first, and then the father, according to Madana.

Then the brother, paternal uncle, &c., equally.

19. But [after them] the brother, paternal uncle and the rest, shall even take and share it [equally]: for among them all, the state of union exists, as the cause whence their right of taking [shares] is derived.

The brothers not re-united share with re-united uncles, &c.

20. So likewise, in an assemblage of unre-united brothers, re-united paternal uncles, half-brothers and others, they even share it [in common], by reason of the two phrases [the one, para. 10]: "If not re-united; but [a whole brother, if] re-united, obtains the property: and not [exclusively], the son of a different mother:" (the other para. 5): "As of a re-united [coheir] the re-united [coheir], so of the uterine brother, the uterine brother."

The wife, if alone re-united.

21. In case of the re-union of the wife alone, she alone takes it, from the same text; "of a re-united [coheir] the re-united [coheir]."

If others were re-united she does not succeed, but must be maintained.

CL.

As must the daughter, who gets also a share, if uninitiated.

22. In an assemblage of the other persons, re-united together with her also re-united, they alone [succeed]; she does not. Moreover, in commencing the topic of re-union, both Çankha and Nárada have declared:[1] "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord: but if they behave otherwise the brethren may resume that allowance." "The maintenance of the daughter of such an one, is enjoined, to be made out of her father's share: if still uninitiated, she will take a share [for the purpose]; if [he died] after that, her husband shall support her."

1—Mit. 326. Jím. Vá. 177. Digest 3d, 477. Reports 2d, 129. Ante section 8th, para. 6th.

Argument to prove that the text is not confined to a case of brothers only.

23. And here, like as no necessity exists for gifts in honour of the deceased at the Abhyudayeshti sacrifice, because there can be no doubt of the existence of materials for it,[1] even so, the term, *among brothers*, is not [necessarily] required, since from the very commencement, there is a certainty of the agency of re-united persons, in the shares, or like [succession], by death, or entry into a religious order.

Among unre-united persons, succeeding to one re-united with other members of the family, the mother is first, then the father, the eldest wife.

24. As for what Çankha,[2] in proceeding to expound re-union, says: "Of those also, departed for heaven without male issue, the property goes to the brothers: In default of them, both parents will take it, or the eldest wife," it, according to Madana, is intended to fix the order of the unre-united brothers, and the others, upon the death of one dying re-united, subsequent to the death of his paternal uncle, brother's son, or half-brother, with whom he had previously made a re-union. And, according to the same authority, in this case also, first is the mother, and next the father [para. 18]. *The eldest* that is, she who [best] preserves her duty.

The sister, and daughter; after them the nearest Sapinda.

25. In default of a wife, the sister; according as Bṛhaspati says:[3] "His *sister* also, is entitled to take a share of it. This law concerns one who leaves no issue, nor wife, nor parent." Some read, his *daughter*. In default [therefore] both of daughter and sister, the nearest sapiṇḍa succeeds.

SECTION X.

Of a Woman's Peculiar Property.—(Stridhana.)

The sources of a woman's property are six.

CLI.

1. Manu:[4] "What was given before the nuptial fire [Adhyagni] what was presented in the bridal procession [Adhyá-váhanika] what was given in token of love [Príti-datta] and what was received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman."

1—This passage, from the Vedas, is left imperfect, the Çástrís professing not to understand it themselves.

2—Mit. 327-339. Jim. Vá. 163. Digest 3d, 473. 3—Jim. Vá. 164. Digest 3d, 476.

4—Chapter 9th, 194. Mit. 300-365. Jim. Vá. 70. Digest 3d, 557.

2. *Six-fold,* is here used in order to prevent [its reduction to] a smaller number, a [position] which borne out by the word *other* in the following text of Yájñavalkya:[1] "What was given to a woman by the father, the mother, the husband or a brother; or received by her at the nuptial fire [Adhyagni], or presented on her supersession [adhivedanika], as also any other [separate acquisition], is denominated a woman's property." Vishṇu[2] likewise specifies more [than those six]: "What has been given to a woman by her father, her mother, her son, or her brother; what has been received by her before the nuptial fire, [Adhyagnyupagata], what has been presented to her on her husband's espousal of another wife [adhivedanika], what has been given to her by kindred, as well as her perquisite [Çulka], and a gift subsequent [Anvádheyika], are a woman's separate property."

And not less; but may be more.

Others specified.

3. In explanation of property *given before the nuptial fire* [Adhyagni] and the other kinds, Kátyáyana[3] says: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire [Adhyagnika]." "That again, which a woman receives whilst she is conducted from her father's house [to her husband's dwelling] is instanced as the property of a woman, under the name of gift presented in the bridal procession [Adhyáváhanika]." What has been given to her through affection by her mother-in-law, or by her father-in-law; or has been offered to her as a token of respect, is denominated an affectionate present [Prítidatta]."[4] "What has been received by a woman at time subsequent to her marriage, from the family of her husband, is called a gift subsequent [Anvádheyika], and so is that which has been similarly received from her own family"[5—6]: Whatever is received by a woman as the value of household utensils, of beasts of burden, of milch cattle, or ornaments of dress, or for works, is called her perquisite [Çulka]." The meaning is, when the bride does not [as usual] obtain household utensils and the rest, then, whatever is given to her at the time of her marriage as the price of them, is termed her perquisite. What she receives on her

Each gift defined:

1st, before the nuptial fire.

2d, in the bridal procession.

3d, through affection.

4th, gift subsequent.

5th, the perquisite.

CLII.

6th, for supersession.

1—Mit. 364. Jím. Vá. 73. Digest 3d, 558.

2—Jím. Vá. 68. Digest 3d, 562, where for 'son', is read 'friend.'

3—Mit. 336. Jím. Vá. 70. Digest 3d, 558. Reports 1st, 64.

4—Mit. 366. note.

5—Mit. 367. Jím. Vá. 69. and note. The Mayukha follows the reading of the Ratnákara, "Svakulát tathá."

6—Digest 3d, 563. Jím. Vá. 92. and note. The reading of the Digest, as far as it agrees with the gloss of our Author, is retained.

supersession [adhivedanika] is explained by Yájñavalkya:[1] "To a woman, whose husband marries a second wife, let him give an equal sum [as a compensation] for the supersession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half." *Half,* here means only so much as will [when added to her own property, make it] equal to the [prescribed] amount of supersession.

Promise of dower is a debt.

4. Devala: "That which a husband has promised for separate property [strídhana] must be made good by his sons, even as a debt." *Promised,* to his wife [striyai].

Nature and amount of a woman's separate property.

5. On the subject of giving property to women, Kátyáyana further declares: "Separate property, excepting immoveables, is to be given to women by their father, mother, husband, brother, and kindred, according to their means, as far as two thousand." The wealth to be given excludes immoveable property, and must not exceed two thousand paṇas, according to Madana. So Vyása:[2] "A present, amounting to two thousand [paṇas] "at the most, may be given to a woman, out of the wealth." And this sum, of two thousand [paṇas] at the outside, is to be given every year, so that in a period of many years, more would by this [means be given]. If they are able, even immoveable property may be given, according to the same, [Madana.]

Property fraudulently given or things lent for use not included.

6. But, in property given to a woman with a view of cheating the heirs out of it, as well as ornaments or the like, given to her merely for the purpose of wearing, a woman has no ownership [or property]; for thus says Kátyáyana: "But whatever has been given to women with a fraudulent design, as well as entrusted to them for use, by their father, brother, or their husband, is declared not to be women's property, [Strídhana]."

Women, have no absolute property in their earnings; or in any but the first six kinds.

CLIII.

7. In what they have earned by the arts, or obtained from friends or those distinct from parents or the rest, women have no property; for thus says the same author:[3] "The wealth, which is earned by mechanical arts, or which is received through affection from any other [but the kindred], is always subject to her husband's dominion. The rest is pronounced to be the woman's property." However, though a text[4] says: "A wife,

1.—Mit. 375. and note. Jím. Vá. 63. Digest 3rd, 17. The Mayúkha agrees with the Mitáksharà.

2—See Chap. 22nd, for the value of the paṇa. Of the various readings of this text noticed in Jím. Vá. 72, our Author adopts: "Dviśáhasraḥ paro dáyaḥ." Digest 53rd, 83.

3—Jím. Vá. 75. Digest 3rd, 566.

4—Of Manu. Chap. 8-416. Colc. on Oblig., p. 232. Digest 2nd, 190-249.

a son, and a slave, are [in general] incapable of property [Nirdhana]: the wealth which they may earn, is [regularly] acquired for the man to whom they belong:" it also relates [only] to wealth earned by mechanical arts and the like. It is moreover agreeable to reason, to refer this also to their not having absolute dominion in wealth received on their supersession [Adhivedanika] and the rest.

In some kinds, they possess absolute property.

8. Again, though Manu says:[1] "A woman should never make expenditure from the goods of her kindred [which are] common to [her and] many; or even from the property of her lord without his assent." (*Expenditure*, is disbursement,) yet, in some kinds of wealth, they are declared to possess sole property, by Kátyáyana:[2] "That which is received by a married woman, or with a maiden, in the house of her husband, or of her father, from her brother or from her parents, is termed the gift of affectionate kindred [Saudáyakam]. The independence of women, who have received such gifts, is recognised in regard to that property, for it was given by their kindred to soothe them, and for their maintenance." "The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale, according to their pleasure, even in the case of immoveables."

But not in immoveable property given by the husband.

CLIV.

9. But over immoveable property given them by their husbands, they do not possess full power, from this text of Nárada:[3] "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property."

Husbands and others do not possess absolute power, over women's property.

10. The non-existence of absolute power, in husbands and the rest, over women's property, is declared by the same author:[4] "Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property, to take it or bestow it: If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person, having obtained her consent, use the property amicably, he shall be required to pay the principal when he becomes rich." Manu:[5] "Such kinsmen, as [by any pretence] appropriate the fortunes of women during their lives, a just king must punish with the severity due to thieves:"[6] "Such ornamental

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1—Chap. 9th, 190. 2—Mit. 366. Cole. on Oblig., p. 26-28. Jím. Vá. 75. Digest 3rd, 573, Reports 1st, 64. Of the readings noticed, our Author reads 'bhrátuh' and 'Kanyayá sárdham;' in the last following the Mitákshará, in the first, the other school. See Section 7th, para. 13.

3—Cole. on Oblig. 28-233, Digest 3rd, 575. Jím. Vá. p. 76. Mit. p. 254, where it is attributed to Vishnu.

4—Jím. Vá. 77. Digest 3rd, 574, where it is attributed to Kátyáyana.

5—Chapter 8th, 29.

6—Chapter 9th, 200. Mit. 375-273. Digest 3d, 571. Reports 2nd, 407.

apparel, as women wear during the life of their husbands, the heirs of the husband shall not divide among themselves: they who do so, are degraded from their tribe." *Wear*, meaning, things worn by them, which have been given to them for the purpose by their husbands or the others. Devala:[1] "Her maintenance, ornaments, perquisite, and gain, are the separate property of a woman; she herself exclusively enjoys it, and her husband has no right to it unless in distress:"[2] "If he let it go on a false consideration, or consume it, he must repay the value to the woman with interest; but he may use the property of his wife, to relieve a distressed son." *Maintenance*, wealth given her by her father, or the others, for the purpose of subsistence. *Gain*, interest [or profit]. *To let go*, get rid of, and give away, have all the same meaning in this place. The word *son* is here used in its general sense, for [any member of] the family. Yájñavalkya[3] "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of some religious duty, or during illness, or while under restraint." Here, by using the word *husband* alone, it is virtually declared, that woman's private property must not be taken by any other but him, even when distressed by a famine or other calamity. *Religious duties*, such as are indispensable. *Under restraint*, in prison.

Though a husband [but none else] may take it under certain circumstances,

without being compelled to restore it.

CLV.

11. In some cases a husband, though unwilling, may be forced to restore it; for, says Devala:[4] "But if the husband have a second wife, and do not show honour to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If suitable food, raiment, and dwelling, be withheld from the woman, she may exact her own [property,] and take a share [of the estate] *with* the co-heirs." That is, *at their hands*.

A husband in some cases may be compelled, to restore it.

12. This however, relates to a virtuous wife, for a wicked one should receive no portion; and accordingly, the same author says:[5] "But a wife, who does malicious acts injurious to her husband, who acts improperly, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property." And again:[6] "Wealth was conferred for the purpose of defraying sacri-

A wicked wife gets no separate property or portion.

1—Jím. Vá. 74, and the note there. Cole. on Oblig. 233, Digest 3rd, 577. At the present day, where the woman's dower is high, it is put out at interest, which is the meaning given to gain, by Jím. Vá. and his commentators.

2—Digest 3d, 577.

3—Cole. Mit. 374. Jím. Vá. 77. Cole. on Oblig. 233. Digest 3d, 578. q. v. Reports 1st, 371.

4—Jím. Vá. 77. Digest 3d, 581, but by both it is attributed to Kátyáyana, and joined to the foregoing texts of that Author.

5—Digest 3d, 585. Ante sec. 8th, para. 8th, but the reading there is somewhat different.

6—Mit. 329. Digest 3d, 586.

fices; therefore distribute wealth among honest persons, not among women, ignorant men, or such as neglect their duties."

The successors to a woman's property are her children.

CLVI.

13. The right of succession after a woman's decease, that [part of her] private property which is entitled a gift subsequent, [Anvádheya] is thus settled by Manu:[1] "What she received after marriage [Anvádheya] from the family of her husband, and what her lord may have given her through affection [prítená] shall be inherited, even if she die in his life-time, by her children [Prajá]." The term *children* is thus explained by the same author:[2] "On the death of the mother, let all the uterine brothers, and the uterine sisters, equally divide the maternal estate."

Argument against the reciprocal rights, of the sons and the daughters.

14. When, from non-existence of daughters and the rest, the right of inheritance devolves even to the sons, from their connexion, then it becomes reciprocal. When this right is taken up by unmarried daughters, then [the son's succession arising from] that connexion, is at end: but, according to the Mitákshará,[3] 'it is not declared that the succession pertains [equally or] reciprocally to the brothers and unmarried sisters,' yet, it has been said by others: 'It is declared, that there is no original connexion of sons and daughters, in property received by their mother after marriage [Anvádheya], or given by her husband through affection [Prítidatta.]

Among daughters, the unmarried are first, sharing with sons.

15. The distinctions in succession among daughters, are pointed out by Manu:[4] "A woman's property goes to her children, and the daughter is a sharer with them, provided she be not given away; but if married, she receives a mere token of respect." *Is a sharer*, shares equally with the sons. *Not given away*, unmarried. It means, that if there be one [unmarried], then the married [daughter] receives a mere token of respect, that is, only something very small. If there be no unmarried daughter, the share of the married daughter is equal to that of the brothers, according to the text of Kátyáyana:[5] "Married sisters shall share with [brothers or] kinsmen."

The daughter's daughters get something,

CLVII.

16. Some trifle also must be given to the daughters of those daughters, according to the text of Manu:[6] "Even to the daughters of those daughters something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."

1—Chap. 9th, 195. 2—Chap. 9th, 192. Mit. 370. Jím. Vá. 78. Digest 3d, 587.

3—Page 371, not quite in the words of our Author.

4—It is not a text of Manu, but of Brhaspati, quoted by Kulluka in his gloss on the above text of Manu, and likewise in Jím. Vá. 78. and Digest 3d, 588. Of the readings noticed, our Author follows that of "labhate mána mátrakam," and himself, in para. 25 refers it to Brhaspati.

5—Digest 3d, 594. 6—Chap. 9th, 193. Mit. 270. Digest 3d, 600.

all property acquired by marriage, the daughter, and not the son takes.

17. But all acquired by marriage [Yautaka] goes to the unmarried daughter alone, not to the son. So a prior text of the same :[1] " Property given to the mother on her marriage [Yautaka] is inherited by her [unmarried] daughter." *Property given on her marriage,* whatever is received by her at the time of marriage or other [ceremony] whilst seated together with her husband; for, according to Madana: 'The word Yautaka, is, in the Nighantu, derived from their being then joined together [Yuta].'

All the property, except two kinds, goes to daughters, unmarried or unprovided.

18. In respect to woman's property, before enumerated in the texts of other sages, distinct from that acquired subsequent to marriage [Anvádheya] or through their husband's affection [Prítidatta], these distinctions are declared by Gautama :[2] " A woman's property goes to her daughters, unmarried or unprovided." *Unprovided,* such as are destitute of wealth.

A distinction when wives of different class exist.

19. The daughter of a Bráhmaṇi wife, however, shall take the wealth of her step-mother; thus Manu :[3] "The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmaṇi damsel take; or let it belong to her offspring." By giving the particle *or* the sense of '*and,*' we have it, 'and shall be shared by [her issue].' Some say, that the word Bráhmaṇi is used to denote any girl of equal or superior caste, but the proof of this must be well examined.

In default of daughters, their issue succeeds.

20. If there be no daughters, then the issue of those daughters succeeds, according to the text of Nárada :[4] " Let daughters divide their mother's "wealth; or, on failure of daughters, their male issue [tad anvaya."]

Distribution among daughters, and among their sons, is according to mothers.

21. A distribution among daughters by different mothers, as well as among the different daughter's sons, to be just, must be apportioned after the example of that prescribed for the sons of different fathers, where the partition is according to their father's shares [not to the number of the sons of each father.][5]

The issue of the daughters, succeeds on their default.

22. However, Yájñavalkya says :[6] " The daughters share the residue of their mother's property, after payment of her debts, and the issue succeeds in their default." And here again, some say, the word *issue* [anvaya,]

1—Chap. 9th, 121, Jím. Vá. 82, and notes.

2—Ante, Sec. 8th, para 12. Reports 2d, 448.

3—Chap. 9th, 198. Mit. 372. Jím. Vá. 83.

4—Mit. 370 and note. Jím. Vá. 82. In the former, it is translated " their male issue," in the latter, " her male issue," our Author prefers the former : see para. 28.

5—See Section 4th, para. 20. 6—Mit. 266-7-368. Jim. Vá. 82.

CLVIII.

Sons take the property, if the debts are equal to it, or more.

has reference to the offspring of the daughters; whilst others hold, that if she leave no daughter, even her sons may take it, since the word tad[1] in the text of Nárada above, distinctly points out the mother alone; and this [first] doctrine agrees with custom. *The residue after payment of her debts*; on this subject those acquainted with the ancient law have declared, that the sons alone must take the property, [if only] equal to, or less than, the amount of debt.

On failure of daughters and their issue, sons, and their issue.

23. If daughters or the rest do not exist, the sons, grandsons, and the rest must take it, for thus it is declared by Kátyáyana:[2] "But on failure of daughters, the inheritance belongs to the son."

The right of the daughters and their issue, confined to the six kinds of property.

24. This right of inheritance, of daughters and the rest, in the mother's property, exists only in wealth given before the nuptial fire [adhyagni,] and in the bridal procession, [adhyáváhanika,] and the other [kinds] above recorded in the texts [paras. 1—2—3,] specifying woman's property; for, if relating to all wealth in which their mother has any property, it would go to set aside those texts [limiting it to six.]

The term 'woman's property' confined to the preceding texts.

25. From this we must understand, that the often-repeated term 'woman's property,' which Bṛhaspati, Gautama, and the rest, have adopted; for example: "A woman's property goes to her children:" [para. 15,] "A woman's property goes to her daughters," [para. 18,] and the like, relates even to the texts above delivered. As many again as, even without actually keeping the phrase, 'woman's property,' have parallel expressions, such as, 'divide the maternal estate,' [Manu, para. 13,] or the like, all those in like manner have reference to the same texts, by a combination of objects having the same origin.

Woman's property is an exception, to the general right of sons.

26. However, the text of Yájñavalkya:[3] "Let sons divide equally both the effects and the debts, after [the demise of] their two parents:" relates to [what is] acquired by the act of partition and the like, with the exception of that declared in the above texts [as woman's property.] From this it is clear that, if there be daughters, the sons or other heirs even succeed to the mother's estate, distinct from that part before described [as woman's property.]

CLIX.

1—Our compilers read tadá, following the modern Benares copy, but it is evidently wrong, the whole argument running on the word tad as a pronoun.

2—Jím. Vá. 82, Digest 3d, 594.

3—Mit. 263. Jím. Vá. 55. The last hemistich of this text was quoted above, para. 22. See section 4th, para. 17.

On default of offspring, the kinsmen succeed.

27. Again, if there be no offspring of either sex, the further [succession] is declared by Yájñavalkya,[1] referring to the abovementioned woman's property: "Her kinsmen [Bándhavá] take it, if she die without issue."

Their right depends on the particular form by which the woman was married.

28. The same author expounds the succession of kindred [Bándhavá] to be according to the different kinds of marriage:[2] "The property of a childless woman married in the form denominated Bráhma, or in any of the other four [unblamed modes of marriage,] goes to her husband: but if she leave progeny, it will go to her daughters; and in other forms of marriage [as the A'sura, &c.] it goes to her father, and mother, on failure of her own issue."] [In the one case,] if there be no husband, then the nearest to her in his [tat] own family takes it; and [in the other case], if her father do not exist, the nearest to her in [her] father's family succeeds, [for the law that:] "To the nearest sapiṇḍa, the inheritance next belongs," as declared by Manu[3] denotes, that the right of inheriting her wealth, is derived even from nearness of kin to the deceased [female] under discussion—and, though the Mitákshará[4] holds, 'that on failure of the husband, it goes to his [tat] nearest kinsmen [sapiṇḍa] allied by funeral oblations;' and, 'on failure of the father, then to his [tat] nearest sapiṇḍas;' yet, from the context it may be demonstrated, that her nearest relations are his nearest relations; and [the pronoun *tat* being used in the common gender,] it allows of our expounding the passage 'those nearest to him, through her, in his own family:' for the expressions are of similar import.

The effect of these rites is different in the different classes.

CLX.

29. In the Bráhma or in any of the other four, relates to the Bráhmanical class, on account of these [rites] being the only ones lawful in respect to them. But as the Gándharva rite is also lawful to the Kshatriya class and the rest, so also, the wealth of her who has been married according to that form devolves to her husband alone. And so Manu:[5] "It is ordained, that the property of a woman married by the ceremonies called Bráhma, Daiva, A'rsha, Gándharva, or Prájápatya, shall go to her husband, if, she die without issue." "But her wealth, given on the marriage called A'sura, or on either of the two others Paiçácha and [Rákshasa] is ordained, on her death without issue, to become the property of her mother and her father."

1—Mit. 367. Jím. Vá. 91. Digest 3rd, 613.

2—Mit. 368. Jím. Vá. 36. Digest 3rd, 606. These rites are explained, Digest 3rd 604.

3—Chap. 9th, 187. Mit. 347. Jím. Vá. 217. Ante section 8th, para. 19.

4—Page 368. The correctness of this version is doubtful.

5—Chapter 9th, 106-7. Jím. Vá. 87. Digest 3rd, 607-8.

30. On failure of the husband of a deceased woman, if married according to the Bráhma or other [four] forms ; or of her parents, if married according to the A'sura or other two forms, the heirs to the woman's property, as expounded above, are thus pointed out by Brihaspati :[1] "The mother's sister ; the maternal uncle's wife ; the paternal uncle's wife ; the father's sister ; the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no son born in lawful wedlock, nor daughter's son, nor his son, then the sister's son and the rest shall take their property." Here must be understood, 'on failure both of the daughter, and also of her daughter,' because only on failure of them does the right of inheritance pertain to the son born in wedlock, or to the daughter's son.

Heirs of a woman on failure of her husband, and parents, defined.

31. In respect of property given by the kindred [Bandhu] at an A'sura marriage or the like, Kátyáyana says :[2] "That which has been given to her by her kindred, goes, on failure of kindred, to her son."

The son in that case inherits presents from kindred.

32. But on the subject of the perquisite, Gautama holds :[3] "The sister's perquisite belongs to the uterine brothers ; after [the death of] the mother."

And the brothers get the perquisite.

33. But what Çankha says :[4] "The lover [may take back] his nuptial present [on the death of his betrothed mistress]," must be understood of one, dying previous to the celebration of the marriage. Here it is further remarked by Yājñavalkya :[5] "If she die [after troth plighted], let the bridegroom take back the gifts which he had presented; paying however, the charges on both sides." The meaning is, that the husband may take back, if his bride be dead, what remains of the perquisite previously given, after calculating the expenses, incurred by himself and by her father.

Gifts to be restored to the bridegroom.

CLXI.

When the bride dies before marriage, deducting charges.

34. On some points Bauddháyana records a distinction :[6] "The wealth of a deceased damsel, let the uterine brothers themselves take. On failure of them, it shall belong to the mother ; or if she be dead, to the father." Those skilled in the ancient law have declared, that this relates to ornaments or the like, presented by the maternal grandfather and the rest, at the time of betrothal, to a girl [who afterwards] dies before completion of the marriage. Here ends the subject of woman's property.

Presents by the maternal kindred, belong to the brothers of a deceased damsel.

1—Jím. Vá. 96. Digest 3-617. In the translation of Jím. Vá. the maternal uncle is put for his wife, and the paternal uncle's wife is not noticed. The present version will be found in the Digest 3d, 618, except that *his* son *is* there explained, the son's son.

2—Jím. Vá. 96. Digest 3d, 594-615. In both, it is '*husband*,' instead of son.

3—Mit. 369, Jím. Vá. 94. Digest 3d, 614. All the authorities seem in favor of this version against Jímúta Váhana.

4—Digest 3d, 614. 5—Mit. 373. 6—Mit. 374. Jím. Vá. 90. Digest 3d, 612.

SECTION XI.

Of exclusion from inheritance,—(Anaṁça.)

Persons excluded from inheritance; must be maintained,

1. Yájñavalkya says:[1] "An impotent person, an outcast and his issue; one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified], must be maintained, excluding them, however, from participation." *His issue*, means the offspring of an outcast.

but may recover their rights.

2. If, after division, virility or the other [absent qualification] be regained, by medicine or other means, the person will then receive his share, like as a son born after partition [does].[2]

Disinherited persons enumerated.

3. Manu says:[3] "Impotent persons and outcasts; persons born blind or deaf; madmen, idiots, the dumb, and such as have lost a sense [or limb, nirindriya], are excluded from a share of the heritage." *Have lost a sense*, deprived of the nose [or smell,] or the like. Nárada also declares:[4] "An enemy to his father, an outcast, an impotent person, and one formally expelled (Apayátrita), take no shares of the inheritance, even though they be legitimate: much less if they be sons of the wife by an appointed kinsman."[5] "One afflicted with an obstinate or an agonizing disease, an idiot; one insane, blind, or lame, must be maintained by the family, but their sons take the shares [of their parents."]

CLXII.

Explanation of the term 'formally expelled.'

4. Formally expelled, one turned out by his kinsmen with the ceremony of kicking down a waterpot or the like, for high treason [Rájadroha] or a similar crime, according to Madana. It properly applies to one who goes across the sea in a vessel or the like, to another quarter of the globe, for the sake of a livelihood; [for]:[6] "Communion is not permitted with a Bráhman [Dvija] who has passed the sea in a ship, even though he has performed penance for it;" therefore, connexion with such an one in this age of the world, is repre-

1—Mit. 360. Jím. Vá. 103. Digest 3d, 321. Reports 1st, 412.

2—Ante Sec. 4th, para. 35.

3—Chap. 9th, 201. Mit. 361. The term Nirindriya is explained, in Jím. Vá. 103 note 7. Reports 1st, 78.

4—Mit. 361, Jím. Vá. 104. Digest 3d, 303. Reports 1st, 78. Our Author adopts none of the readings noticed by Jím. Vá. but takes that of Çankha's text below.

5—Digest 3d, 303.

6—General note to Manu, Smṛti (3).

hended. And no form is laid down for performing the ceremony of kicking down the waterpot, or for expulsion for high treason. Çankha and Likhita:[1] "The heritable right of him who has been formally degraded [Apayátrita], and his competence to offer oblations of food and libations of water, are extinct."

Another result of degradation.

5. Vasishtha:[2] "They who have entered into another order, are debarred from shares." Here are meant the perpetual student, the hermit, and the ascetic. Kátyáyana[3] "But *the son of a woman married in irregular order*, as well as he who is produced through a kinsman [Sagotra], and an apostate from a religious order, never obtain the inheritance."

Persons entering another order debarred from shares and sons of women married in irregular order.

6. [Produced] *through a kinsman*, means one born of a woman married to one of her own [Sagotra] relations. *The son of a woman* married in irregular order, means, according to some, the Kshetraja, Kánína, and other sons. But, when the marriage of a younger daughter has been celebrated whilst her eldest sister is still unmarried, they are then both said to be 'out of their order;' and this is the proper application of the term [Akrama.] If he be of the same class as his father, his qualification for inheriting is declared by the same author[4]: "But the son of a woman married in irregular order may be heir, provided he belong to the same tribe with his father: and so may the son of a man, belonging to a different [but superior] tribe, by a woman espoused in the regular gradation.

Explanation of that term.

CLXIII.

If of the same class as the father, the son may inherit.

7. Also, if sons be begotten by a husband on a wife sprung from a higher class, they shall not take the inheritance, for thus says the same author:[5] "The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment for life are considered to be due to him by his kinsmen."

Sons by a woman of higher class do not inherit.

8. If there be other sons endowed with good qualities, the inheritance is not to be taken by a vicious one; for says Manu:[6] "All those brothers, who are addicted to any vice, lose their title to the inheritance." Bṛhaspati:[7] "Though born of a woman equal in

A vicious son does not inherit, if other sons exist.

1—Digest 3rd, 300. Jim. Vá. 101, which attributes it to Ápastamba.

2—Mit. 355-361. Digest 3rd, 327. 3—Jim. Vá. 104, and notes. Digest 3d, 325-6.

4—5—Digest 3d, 326, Jim. Vá. 105. Of the readings mentioned, our Author has, 'grassachhadanam atyantam.'

6—Chap. 9th, 214. Jim. Vá. 102. Digest 3d, 299.

7—Jim. Vá. 102. Digest 3d, 301-2, where the term Çrotriyá is applied to the kinsmen themselves, as an illustration merely.

class, a son destitute of virtue is unworthy of the paternal wealth; it is declared to belong to those kinsmen who offer funeral oblations to the deceased, and are of virtuous conduct." "A son redeems his father from debt to superior or inferior being; consequently there is no use for one who acts otherwise."

Persons excluded from inheritance, must be maintained, as long as they live.

9. But all those excluded from participation must be maintained during the rest of their lives, by those who get the estate, from this text of Manu[1]: "But it is fit, that a wise man should give all of them food and raiment, without stint, to the best of his power: for he who gives it not, shall be deemed an outcast." (*Without stint*, signifies 'as long as they live,') as well as from the foregoing one of Yájñavalkya [para. 1:] "Those excluded from inheritance, must still be maintained."

Except those entering another order, outcasts, and their sons.

CLXIV.

10. Those who have entered into another order, and outcasts, as well as their respective sons, are not to be maintained. Vaishtha says: "They who have entered into another order, are debarred from shares [para. 5]: as also an impotent man, a madman, and an outcast; but let the impotent and madman (receive) a maintenance." Here, the maintenance of two only being mentioned, is meant as an indication that the others are excluded. Devala:[2] "When the father is dead [as well as in his life-time,] an impotent man, a leper, a madman, and idiot; a blind man, an outcast, the offspring of an outcast, and a person fraudulently wearing the token [of religious mendicity,] are not competent to share the heritage: food and raiment should be given to them, excepting the outcast." *Wearing the token*, assuming a prohibited mark [linga]. Bauddháyana:[3] "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties, excepting however the outcast and his issue." Even those degraded from the life of an ascetic, as well as their sons, are neither of them to be maintained, according to Madana and others.

The qualified sons of a disinherited man, may inherit; with certain exceptions.

11. But the blameless sons, even, of one from these causes disinherited, shall take a share, according to the text of Vishnu:[4] "The legitimate sons, even of these, [are sharers of the patrimony;] but not the sons born to a degraded man after the commission of the act which caused his degradation, nor those who are procreated [on a woman of a higher class, that is] in the inverse order of the classes: their sons do not participate, even

1—Chapter 9th, 202. Mit 363. Reports 1st, 412.

2—Jim. Vá. 103. Digest 3rd, 304. 3—Jim. Vá. 104. Digest 3d, 310.

4—Digest, 3d, 316.

in the property left by the paternal grandfather :", and this of Yájña-valkya :[1] "But their sons, whether legitimate, or the offspring of the wife by a kinsman, [Kshetraja] are entitled to allotments, if free from similar defects."

Special rule for their wives and daughters.

CLXV.

12. Yájñavalkya :[2] delivers a special rule concerning the daughters and wives of these : "Their daughters must be maintained likewise, until they are provided with husbands." "Their childless wives, conducting themselves aright, must be supported ,' but such as are unchaste, should be expelled : and so indeed should those who are perverse." If she be *unchaste*, a woman must be turned out of doors, and without a maintenance. A *perverse* woman also should be turned out of doors, but a maintenance must be provided for her, according to Madana, and others.

1—Mit. 363. Jím. Vá. 107. Digest 3rd, 322, Reports 2nd, 669, properly applying to paras. 1-2, but omitted.

2—Mit. 308. Jím. Vá. 107. Digest 3rd, 342. Reports, 1st, 412.

CHAPTER V.

NON-PAYMENT OF DEBTS,—[ṚṆA'DA'NAM].

SECTION I.

Of Loans in General.

Loans. CLXVI.

1. BṚHASPATI :[1] explains, on this subject, the rules for regulating a creditor's conduct, or transactions : "A prudent lender should always deliver the thing lent, on receiving a pledge [Bandhaka] of adequate value, either to be used by him, or merely kept in his hands ; or with a sufficient surety [Lagnaka], and either with a written agreement, or before credible witnesses." A *pledge*, such as this, when the pawnee promises, 'As long as I fail to clear off thy debt, so long will I not alienate, either in gift, sale, mortgage or other mode, this house, field, or other [pledge.'] *Surety*, one standing in the debtor's room. The same author says :[2] "That loan [ṛṇa] which, increased to four times or eight times the principal, is [thus] received back, without apprehension of sin, from an abject or distressed person, is called a loan on interest [kusída."]

Interest on them.

2. Kátyáyana :[3] "Stipulated interest [karita] is that which has been specially [and freely] promised by the debtor, in a time of extreme distress, above the allowed rate." "When any one pays interest from time to time, it is recorded as Çikhávṛddhi or hair-interest." *From time to time*, means interest is to be paid by the day, month, or year.

The rates of it.

3. Yájñavalkya :[4] "An eightieth part [of the principal] is the monthly interest, when a pledge has been delivered : otherwise, it may be, in the direct order of the classes, two, three, four, or five in the hundred." *Otherwise :* if there be no pledge ; for Vyása[5] says : "Monthly interest is declared to be an

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1—Digest 1st, 10. Strange's Elements 1st, 276-306. Dhanika, Uttamarṇika—a lender, obligor, creditor. Ṛṇika, Udhamarṇik,—the borrower, obligee, debtor.

2—Digest 1st, 11. 3—Digest 1st, 50. Colebrooke on Oblig. 34. For interest, see Strange, 1st, 295-6.

4—Digest 1st, 99. 5—Digest 1st, 101.

eightieth part of the principal, if a pledge be given; a sixtieth part is to be paid, if there be [only] a surety; and if there be neither pledge nor surety, two in the hundred [may be taken from a debtor of the sacerdotal class.]" Yájñavalkya[1] ordains: "All borrowers, who travel through vast forests, may pay ten, and such as traverse the ocean, twenty in the hundred:" They must pay it, as shewn by the last half of the couplet: "To lenders of all classes [according to circumstances;] or whatever interest has been stipulated by them [as the price of the risk to the lender."]

CLXVII.

4. Vishṇu says: "In all the classes, if a person borrow money under agreement, as, 'I will repay it to-morrow,' but should for his own profit not pay it, the lender shall receive interest from after [the term fixed."] The interest on a thing lent for use [Yáchita,] is thus declared by Kátyáyana:[2] "He who, having received a chattel lent for use, goes to a foreign country without restoring it, must pay, interest, according to the value of it, after one year."—[3]: "Though a loan be made [expressly] without interest [Uddhára,] yet, if the debtor pay not the sum lent after demand, but [fraudulently] go to another country, that sum shall carry interest after a lapse of three months."—[4]: "A debtor, who even residing in his own country, pays not [the debt] after more demands than one, shall be forced, however unwilling, to pay interest on it, though not stipulated, [after the lapse of one year."] And Nárada[5] says: "There shall be no interest, without a special agreement, on valuable things lent through friendship, [for use, not for consumption]; but, even without agreement, property so lent bears interest after half a year." Kátyáyana:[6] "What has been amicably lent for use, shall bear no interest until it be demanded back; but if, on demand, it be not restored, it shall bear interest [on its true value] at the rate of five in the hundred."—[7]: "Should a man, having bought a marketable commodity, [fraudulently] go to another country, without paying the price of it, that price shall bear interest after three seasons [or six months]." "[Even] without a journey to a foreign country, a deposit, the balance of interest, a commodity sold, and the price of a commodity purchased, not being paid [or delivered] after demand, shall bear interest, at the rate of five in the hundred [if the debtor be a Çúdra]."

When due without stipulation.

5. Nárada[8] says: "A commodity, the price [of a commodity], wages, a deposit, and [the like]; a fine [to the king], a thing clandestinely taken [without a design to steal it], a thing idly promised, and a stake played for, carry no interest [before demand], without a special

Stipulation of it when necessary.

CLXVIII.

1—Digest 1st, 42. 2—Digest 1st, page 36 and 37, for the different readings.
3—Digest 1st, page 46. Strange 1st, 286.
4—Digest 1st, page 104, where it is 'three seasons.'
5—Digest 1st, 97. 6—Digest 1st, 99-100. 7—Digest 1st, 104.
8—Digest 1st, 134.

agreement." *A stake played for,* the object played for with dice. *Without special agreement,* not positively declared. Yájñavalkya :[1] "property lent, which the creditor will not receive back, when tendered, must be deposited with a third person, and bears no interest afterwards."

Accumulation by interest specified.

6. Bṛhaspati :[2] "On the precious metals [or gems], the interest may make the debt double ; on clothes and inferior metals, treble; on grain, quadruple; so on fruit, beasts of burden, and wool or hair." *Fruit,* flowers, roots, fruits, &c. *Beasts of burden,* bullocks, &c. *Wool,* that of sheep ; and the hair of the Chamara [Bos Grunniens] and other [animals of that species.] But, this of Manu :[3] "Interest on grain, on fruit, on wool or hair, on beasts of burden, [lent to be paid in the same kind of equal value,] must not be more than enough to make the debt quintuple," must be understood as a prohibition of six-fold, or higher increase. Kátyáyana says :[4] "For gems, pearls and coral ; for gold and silver, for cloth made of [cotton] the produce of fruit, or made of silk, or made of wool or hair, the interest stops when it doubles the debt." Of silk, that is, made from the produce of insects, and clothes made from the hair of the Chamara and other animals. Vasishṭha : "Interest on copper, iron, queen's metal, prince's metal, tin, and also on lead, makes the debt three-fold, only if much time have elapsed." Vyása: "Interest increasing the debt six-fold, is declared allowable on vegetables, cotton, and seeds." Kátyáyana :[5] "For all sorts of oil and spirituous liquors, for the different kinds of clarified butter, for molasses, and salt, the interest is held legal, though [with the principal], the debt be made octuple." Vishṇu :[6] "On precious metals, [or gems], the highest interest shall make the debt double ; on cloth, treble ; on grain, quadruple ; [on fluids, octuple] ; on female slaves or cattle, the offspring shall be taken as interest." So :[7] "[Ráre] flowers, roots, and fruit ; what is sold by weight [except gold and the like], may make the debt eight-fold."

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Explanation.

7. Nárada :[8] "Of interest on loans, this is the universal [and highest rule] ; but the rate customary in the country where the debt was contracted may be different." *Universal* every where current; and this relates only to a debt doubled, or more than doubled, by interest, by the first transaction ; for if at a different time a fresh speculation be entered into, with a different person, or even with the same, under a chance of profit or loss, in such case, even higher interest may accrue. So also Manu :[9] "Interest on money received at once, [not month by month, or day by day,

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1—Digest 1st, 133. 2—Digest 1st, 109. 3—Digest 1st, 112.
4—Digest 1st, 121. 5—Chap. 8th, v. 151. Digest 1st, 110.
6—Digest 1st, 113. 7—Digest 1st, 115. Vasishṭha.
8—Digest 1st, 53.
9—Chap. 8th, v. 151. The last hemistich was quoted above.

as it ought,] must never be more than enough, to double the debt, [that is, more than the amount of the principal paid at the same time."] But in any one case where it is realized [by degrees,] or at various times also, more than this legal or allowable interest may be levied, according to Vijñáneçvara and other authorities.[1]

SECTION II.

Of Pledges,—[A'dhi.]

Pledges.

1. Brhaspati:[2] "A pledge [A'dhi] is called bandha, and is declared to be divisible into four parts: Moveable [or personal;] and fixed, [or real;] for custody only [gopya;] and for use bhogya]." Nárada:[3] "That to which a [secondary] title is given, is a pledge. It has two forms, to be released at a fixed time, or to be retained until payment be tendered."

Rules for their custody.

CLXX.

2. Hárita: "In the same state as the pledge has been deposited, even so let the pawnee take care of it: otherwise he shall lose his interest; or in case of its being damaged, he shall pay the value of it." *Damaged*, that is, if the pledge be destroyed. Yájñavalkya:[4] "If a pledge for custody [gopya] be used, there shall be no interest, nor, if a pledge for use [bhogya] be damaged:" meaning, *damaged* so as to be unfit for use. Kátyáyana:[5] "He who employs on work an unwilling [slave or other living] pledge, without the assent [of the owner,] shall be compelled to pay the value of the work, or shall receive no interest on his loan." *Employs on work*, makes use of him. *Value of the work*, the hire [of the person, &c. employed.]

Damage by the pawnee.

3. Yájñavalkya:[6] "A pledge spoiled, [lost,] or destroyed, unless by the act of God or the king, shall be made good [by the creditor."] *Spoiled*, which has incurred damage. *Made good*, by being restored equal to its former state. Brhaspati:[7] "Any pledge, being used, and wholly spoiled [by the fault of the pledgee,] the principal debt shall be lost." In case of a pledge being damaged, its value must be paid for, as Vyása says:[8] If gold, or other (precious) thing, shall be pledged, and lost by the negligence of the receiver, that creditor, on the principal

1—Cole. on Oblig. 80. 2—Digest 1st, 140, q. v. 3—Digest 1st, 142.
4—Digest 1st, 145. Strange's Elem. 1st, 288. 5—Digest 1st, 151.
6—Digest 1st, 145. See post. Chap. 6th, paras. 5—7.
7—Digest 1st, 149. Strange 1st, 283-288.
8—Digest 1st, 146.

and interest of his loan being paid, shall be forced to pay the price of the pledge." Nárada :[1] "If a pledge be lost [and the creditor do not replace it,] the principal itself shall be forfeited; unless the loss was caused [without his fault] by the act of God or of the king." Mánu :[2] "[The pawnee] must satisfy the pawner, [if the pledge be spoiled or worn out,] by paying him the original price of it; otherwise, he commits a theft of the pawn."

When to be removed or made good by the pawner.

CLXXI.

4. Bṙhaspati :[3] "If a pledge be destroyed by the act of God or king, creditor shall either obtain another pledge, or receive the sum [lent] together with interest." Vyása[4] says: "If the pledge be destroyed by the act of God or the king, no fault is by any means imputable to the creditor." Kátyáyana :[5] "When a pledge becomes unfit for use, or perishes, without any fault on the part of the creditor, the debtor shall be compelled to deliver another pledge; [for,] he is not exonerated from the debt." Yájñavalkya[6] also declares: "By the acceptance [or actual possession] of a pledge, [the] validity [of the contract] is maintained. If it be spoiled, when carefully kept, another chattel must be pledged, or the creditor must receive the amount [of principal and interest."]

Rules in cases of re-bailment.

5. Nárada[7] says: "Pledges [ádhi] are declared to be of two sorts, immoveable and moveable; both are valid when there is actual enjoyment, and not otherwise." Vasishtha also says: "When more deeds than one have been drawn up, at the very same time, in a case of pledge, he who has first got possession must be held to have the strongest pledge." The same author adds: "If two creditors should, on the very same day, come with a view to take possession of their pledge, it must then be equally divided, and possessed by them; this is certain." Kátyáyana :[8] "Should a man hypothecate the same thing to two creditors, what must be decided? The first hypothecation shall be established, and the debtor shall be punished as for theft."

Lapse of the term.

CLXXII.

6. Yájñavalkya[9] says: "That pledge is totally lost, which the pawner fails to redeem when the principal is doubled. That fixed with a term for redemption, is lost on the expiration of the term: but an usufructuary pledge is never destroyed." But Bṙhaspati[10] declares: "Gold being doubled,

1—Digest 1st, 145. 2—Chap. 8th, v. 144. Digest 1st, 150. Strange 1st, 288.

3—Digest 1st, 159. 4—Digest 1st, 160.

5—6—Digest 1st, 161. Strange's Elem. 1st, 291.

7—It is attributed to Vyása in the Digest 1st, 205. Reports 1st, 304. 2d, 134. Strange 1st, 287-289.

8—Digest 1st, 209. For hypothecation, see Strange's Elem. 1st, 288-89. Essay on Bailments, p. 83-4.

9—Digest 1st, 183. Reports 1st, 303.

10—Digest 1st, 186, where the text is attributed to Vyása. Reports 1st, 303.

and the stipulated period having expired, the creditor becomes owner of the pledge, after the lapse of fourteen days." Vyása :[1] "After giving notice to the debtor's family, a pledge for custody may be used when the principal is doubled, and so may a pledge for a limited period, when that period is expired.

7. Bṛhaspati[2] : "When the debt is doubled by the interest, and the debtor is either dead, or has absconded, the creditor may attach his [pledge or the debtor's] chattel, and sell it before witnesses." Yájña-valkya :[3] "A debtor shall be compelled to pay, with interest, a debt contracted on a peculiar pledge, [Charitram] and he shall be compelled to re-pay two-fold, a debt contracted on a chattel [of small value] delivered as an earnest [of purchase or sale.] When a borrower, from his confidence in the lender, deposits with him a valuable pledge for a small consideration, or where the lender, entertaining a like confidence in the borrower, advances a large sum on a pledge of small value, this will be a peculiar pledge ; or the word Charitram may signify, the pledge of good actions, as, of the reward for ablution in the Ganges, or the like. And in both these species, denominated peculiar pledge, even if the thing be doubled by interest, it is not forfeited. Even if the debt be doubled, it must be paid, but the pledge is not forfeited. *Delivered as an earnest,* means that when a debt contracted on such grounds is doubled with interest, the earnest so pledged is not forfeited.

Redemption of mortgage.

8. The same author[4] says : "To the debtor who comes to redeem his pledge, the creditor shall restore it, or be punished as a thief ; and if the creditor be [dead, or] absent, the debtor may pay the debt to his kinsmen, and shall take back his pledge"[5] : "Or appraised at the value it then bears, it may remain there [with the creditor], exempt from interest." If the creditor [Uttamarṇa] be not present, [the debtor] may place the amount of his debt, with its interest, in the hands of some other person of his creditor's family, and take back his pledge. Or if he wish to sell the pledge, from desire of realizing its value, let him have it valued at the time, and leave it in deposit [with his creditor but] without interest [considering it a debt discharged]. This is the meaning.

CLXXIII.

Bṛhaspati :[6] "When land or other [immoveable property] has been enjoyed, and more [than the principal debt] has accrued therefrom, then, the principal and interest having been realized, the debtor shall obtain his pledge." Yájña-valkya : "Whenever a debt under mortgage has become doubled by interest, then the pledge shall certainly be returned, whenever double the sum lent has been received."

1—Digest 1st, 197. 2—Digest 1st, 199. Strange's Elem. 1st, 288.
3—Digest 1st, 203, from which the present translation deviates to suit the gloss.
4—Digest 1st, 169. 5—Digest 1st, 171.
6—Digest 1st, 177.

SECTION III.

Of Sureties,—[Pratibhú].

1. Now surety is of three kinds, according to Yájñavalkya,[1] who says; "Suretyships is ordained for appearance, for trust, and for payment." *Trust* here means,—Raising of confidence, by saying 'this man is true.' Bṛhaspati:[2] again, enumerates four kinds of sureties, [of whom]: "The first says, 'I will point him out;' the second, 'this man is trust-worthy;' the third, 'I am the payer of this money;' the fourth, 'I will cause to give it.'" Which last means, 'I will hereafter make [the debtor] pay this debt' Kátyáyana says: "Let three full Paksha, or lunar half-months, be allowed to the surety, for the purpose of seeking an absconded principal, and if he point out the principal, then let the surety be held worthy of being absolved." The three *half-months*, are to be understood only as an example, meaning, that so much time must be allowed as is required for the search.

Sureties.

2. Kátyáyana:[3] "If a surety for the appearance of a debtor produce him not at the time, and in the place agreed on, he shall discharge what he is bound for, unless he was prevented by the act of God or the king." *Discharge what he is bound for;* shall pay the sum due to the creditor. Bṛhaspati[4]: "The two first [kind of sureties] on failure of their engagement, must pay the sum lent, at the time stipulated: the two last, or in default of them, their issue, when the debt is sued for." Kátyáyana:[5] "Money due by a surety need not on any account be paid by his grandsons, but in every instance such a debt incurred by his father must be made good by a son, without interest." Vyása:[6] "The son of a son shall [in general] pay the debt of his grandfather, but the son [only] shall pay the debt of his father incurred by his becoming a surety, [and both of them] without interest; but it is clearly settled, that their sons, [the great-grandson and grandson respectively] are not [morally] bound to pay." The grandsons need only pay the principal amount of their grandfather's debts—A son need only pay the principal of a debt incurred by his father as a surety, and devolving on him.

When liable themselves, and their son's

CLXXIV.

but not grandsons.

1—Digest 1st, 239. Report 1st, 95. Strange 1st, 298-9.
2—Digest 1st, 233. 3—Digest 1st, 233.
4—Digest 1st, 241.
5—Digest 1st, 255. 6—Digest 1st, 254.

3. This however, supposing the security to have been undertaken by him without receipt of property [or consideration] in return; for if he received [any] property as an inducement to become surety, in that case, the sum for which he was bound shall be paid with interest, by his sons or grandsons. And accordingly Kátyáyana[1] declares: "Should a man become surety for the appearance of a debtor, from whom he had received a pledge [as his own security], the creditor, [if that surety die], may compel his son to pay the debt, even without assets left by his father."

Exception.

4. Yájñavalkya:[2] "When there are two or more sureties jointly bound, they shall pay their proportionate shares of the debt; but when they are bound severally [Ekachchháyá], the payment shall be made [by any of them], as the creditor pleases." Severally, is when each of them makes this agreement, 'I alone will pay the whole.' This [agreement] being obtained as the creditor's guarantee, any one of the sureties, from whom he may please to demand the debt, must pay it. If the compact of each be thus, 'I will pay my share;' then payment must be made accordingly. Thus must it be understood. Kátyáyana: "When two or more are severally bound, any one of them may be made to pay, whenever he is found. If absent in a foreign country, his son shall pay the whole; if the father be dead, his son shall be forced to pay, according to his father's share." *Father's share*, that is, in proportion to the father's share [of the whole debt guaranteed.]

Law of "jointly and severally."

CLXXV.

5. Yájñavalkya:[3] "When the surety is compelled to pay a notorious debt to the creditor, the debtor shall be forced to repay double the sum to the surety." Bṙhaspati:[4] "Should a surety, being harassed, pay the debt for which he was bound, he shall receive twice the sum from the debtor, after the lapse of a month and half."

Surety's remuneration by the principal.

SECTION IV.

Of Recovery of Debts.

1. Now these are the rules for recovery of debt by a creditor. Bṙhaspati:[5] "From a debtor who promises payment, the debt may be recovered by mild remonstrance

Recovery of debts.

1—Digest 1st, 248-49, the second reading is followed..

2—Digest 1st, 257. Colebrooke on Obligations, 158-61.

3—4—Digest 1st, 258. Cole. on Obligations, 158-61. 5—Digest 1st, 349.

and the like; and by other resources; by the mode of moral duty; by legal deceit; by violent compulsion; and by confinement at home." *Promises*, engaged for by the debtor.

Means of recovery enumerated.

2. By other resources, that is, by the means [upáya,] which are thus enumerated by the same author:[1] "By the interposition of friends and kinsmen, by mild remonstrance, by importunate following, or by staying constantly at the house of the debtor, he may be compelled to pay the debt: this mode of recovery is called a mode consonant to moral duty, [dharma."][2]: "When a creditor, with an artful design, borrows anything of his debtor, or withholds a thing deposited by him, or the like, and thus compels payment of the debt, this is called legal deceit [upádhi."][3] "When, having tied the debtor, he carries him to his own house, and by beating or other means compels him to pay, this is called violent compulsion [balátkára."][4] "When he forces the debtor to pay, by confining his son, his wife, or his cattle, or by watching constantly at his door, this is called lawful confinement [ácharitam."] *Following*, claiming his attention. *Staying at the house*, begging the money of him. *Deposited*, [anváhitam] ornaments or other things, given as if for delivery to another.[5]

Rules for enforcing them.

CLXXVI.

3. The rules for putting such means in force, are thus declared by Kátyáyana:[6] "By mild expostulation let a creditor procure payment from a king, from his master, and from a priest; but from a friend, or an heir, by some artful contrivance." "Bhṛgu ordained, that merchants, cultivators of land, and artists, must be made to pay their debts according to the custom of the country; but that a creditor might enforce payment from dishonest debtors, by violent measures." The same author adds,[7]: "A debtor, being arrested [and freely acknowledging the debt,] may be openly dragged before the public assembly, and confined until he pay what is due, according to the immemorial usage of the country [deçáchára."] Preventing the prisoner from performing natural evacuations, is thus prohibited by the same author:[8] "When a prisoner has need of ejecting urine or fæces, he should either be followed [at a distance,] or dismissed on security." *Security*, by leaving his son or other relative, to be a prisoner in his stead.

Security to be taken.

4. Taking security for a prisoner's appearance, he may be set at liberty for meals; for the same author says:[9] "Should he have given a surety, he must be released each day, at the hour of meals; and at night, if a surety have

1—Digest 1st, 339.

2—Digest 1st, 341. Colebrooke on Obligations, 203. Strange's Elem. 1st, 283.

3—Digest 1st, 343. 4—Digest 1st, 342. Strange, 1st, 307.

5—Chapter 5th, para. 6. 6—Digest 1st, 344, q. v. 7—Digest 1st, 339.

8—Digest 1st, 346, where it reads, 'in fetters.'

9—Digest 1st, 346-7. Strange's Elem. 1st, 307.

been given to such effect: But if he do not tender a surety for appearance, nor avail himself of such a surety, he must be confined in jail, or delivered to the custody of keepers." "A venerable, trustworthy, and virtuous man, shall not be confined in jail; unrestrained, he must be released, [or dismissed] under the obligation of an oath." *Nor avail himself*, if he should not give [security], having the opportunity. *Jail*, a prison. *Keepers*; that is, he must be put in confinement duly made over to the officers. *Trust-worthy*, creditable.

Compound interest allowed.

CLXXVII.

5. Bṙhaspati:[1] "After the time for payment has past, and when the interest ceases [on becoming equal to the principal], the creditor may either recover his debt, or require a new writing in the form of wheel-interest [chakravṙddhi]." *After the time for payment has past*, and that is, when the debt having by interest become double, or more than that [where higher interest is legal], the interest on that event reaches its legal boundary. *The creditor may recover his debt*, may exact it. Charging interest on a debt, of which the interest has been [from time to time] added to the principal, is called chakravṙddhi, wheel or compound interest.[2]

Mode of exacting payment acknowledged debts.

6. Nárada:[3] "Should a debtor be disabled, by [famine or other] calamity of the time, from paying the whole debt, he shall be only compelled to pay it [in small sums], from time to time, according to his ability, as he happens to gain property." Manu:[4] "Even by personal labour shall the debtor pay what is adjudged, if he be of the same class with the creditors or of a lower; but a debtor of a higher class must pay it [according to his income], by little and little." And though Yájñavalkya[5] says: "He may compel a poor debtor of a low class to do work, by way of paying his debt: but a Bráhmaṇa, if indigent, must be made to pay gradually according to his income [or casual gains.]" yet the word *Bráhmaṇa* here refers to any man of high caste. The same author[6] adds: "He who recovers an acknowledged debt by his own act, [in any of the legal modes to which the debtor has tacitly consented] shall not be blamed by the king; and if the debtor shall complain of such an act before the king, he shall be fined, and compelled to pay the debt."

Debtor's appeal to justice.

7. Bṙhaspati:[7] "This rule concerns an acknowledged debt; but he who contests the demand, shall be compelled to pay, on proof in court by written evidence or oral testimony." "When the debtor appeals to judicature, or when the demand is unliquidated [or doubtful, sandigdha] he shall never be constrained by the mere act of the creditor; and he

1—Digest 1st, 357. Strange 1st, 297. 2—Cole. on Oblig. p. 80. "Compound Interest."
3—Digest 1st, 353. 4—Chapter 8th, v. 177.
5—Digest 1st, 351. Strange's Elem. 1st, 308. See Chap. 16th, Sect. 1st, para. 3 note.
6—Digest 1st, 856. 7—Digest 1st, 363-4.

who constrains a debtor thus exempted from such constraint, shall be fined according to law." *Constraint* [ásedha];[1] imprisonment not against the king's order. He adds:[2] "A debtor is considered as appealing to judicature, when he says, 'I will pay whatever shall by law be declared to be due."' Kátyáyana:[3] "Any creditor who harasses a debtor appealing to judicature, shall forfeit that claim, and pay an equal fine." Bṛhaspati: "Should any person take upon himself to act in a disputed matter, without having first made known his case to the prince, he shall be seized and sentenced to punishment; neither shall his claim be awarded."

CLXXVIII.

8. Yama:[4] If a rich debtor, through dishonest perverseness, pay not his debt, the king shall compel him to discharge it, and may take from him twice the sum [as a fine]." Yájñavalkya:[5] "A debtor shall be forced to pay to the king ten in the hundred, of the sum proved against him; and the creditor, having received the sum due, must pay five in the hundred [towards defraying the charges of judicature]." *Ten in the hundred*, that is, ten besides [or over] every hundred [awarded to his creditor.] A tenth share [from the debtor cast], and a twentieth, [from the creditor] is here meant. The result is, that these two shares belong to the king, and the balance goes to the creditor. Taking a tenth share, relates to a poor debtor; for in respect to a rich one, Nárada[6] records this distinction: "But if a rich debtor, through dishonest perverseness, pay not his debt, and the king be forced to cause payment, he may then take twenty as his share." Meaning, *twenty* on the hundred.

Costs of suit.

9. When more creditors than one are collected together against one debtor, the order of payment is [to be as] thus laid down by Yájñavalkya:[7] "A debtor shall be forced to pay his creditors in the order in which the debts were contracted, after first discharging those of a Bráhman, or of the king." And in the Viváda Ratnákara we find these words of Kátyáyana:[8] "If there be many debts at once, that which was first contracted shall first be paid, after those of a king, or of a Bráhman learned in the Veda":[9] "If all the contracts were written in one day, the debts, payment, subsisting demand, and interest, shall be equal; otherwise, in order of time":[10] "That capital on which it is proved that the assets were gained, and no other debt, must be paid by the debtor [out of those assets."]

Priority among many claims.

CLXXIX.

1—See Chap. 1st, Sec. 1st, para. 16. 2—Digest 1st, 364.

3—Digest 1st, 368. 4—Digest 1st, 368. Strange's Elem. 1st. 307.

5—Digest 1st, 372-8. Strange's Elem. 307. This was the practice under the Mahratta Government, which levied a tax upon both parties, that from the winner being termed Harkí, that of the loser Gunhegárí.

6—Digest 1st, 371 and 375

7—Digest 1st, 736 and note. In the 7th line, "u'tamvarṇánám," is printed for uttamarṇánám, contrary to all the manuscripts.

8—9—Digest 1st, 377-8. 10—Digest 1st, 380.

Receipts and acquittances.

10. Yájñavalkya,[1] "If the debtor pay by little and little, let him write the sums paid on the back of his written contract, or let the creditor give a receipt signed by his own hand." Nárada:[2] "Let the creditor give a writing after the debt has been acquitted; or if that cannot be, let him make a [public] acknowledgment: this shall be a mutual acquittance of the creditor and debtor." *Acknowledgment*, some deed of settlement, for the purpose of making known repayment of the debt.

Moral effect of fraud.

11. The bad consequences that will ensue to a debtor, neglecting to pay his debts, are now described. Kátyáyana says: "He who shall not pay to his creditor what he has received from him in loan [Uddhára] or other way, shall most certainly be born again, either his slave, servant, wife, or beast of burthen." *Loan*, debt [of all kinds, ṛna.] To *other*, must be supplied, loan for use, and deposit. *Slave*, one by birth. *Servant*, a slave bought with a price. Nárada: "If a man do not repay what he has borrowed for use, and a debt, as well as what he has promised, that sum may be increased, even to ten million times its original amount. And after that, if it be allowed to increase still more, until by its own accumulation it have amounted to an hundred [times] ten million, it must then stop; the debtor shall become, in each successive birth, a horse, an ass, a bullock, and a slave." "*Promised*, what he has agreed to give. Vyása also says: "When a person, being either an ascetic, or keeper of a perpetual fire, dies indebted to any one, the future rewards, of the austerities of the one, and the sacred duties of the other, shall all be transferred to the account of the creditor.

CLXXX.

Sons and grandsons when liable.

12. Bṛhaspati[3] declares: "The sons must pay the debt of their father, when proved, as if it were their own [that is, with interest;] the son's son must pay the debt of his grandfather [but] without interest; and his son [that is, the great-grandson,] shall not be compelled to discharge it, [unless he be heir, and have assets."] So Yájñavalkya:[4] The father being gone to a foreign country, or deceased [naturally or civilly,] or wholly immersed in vices [or difficulty,] the sons, or their sons, must pay the debt; but if disputed, it must be proved by witnesses."

Only when twenty years old.

13. Debts must be paid by the sons, or other relatives, when they have reached their twentieth year, for Nárada says:[5] The father, or [if the family be undivided], the uncle, or the elder brother, having travelled to a foreign country, the son shall not be forced to discharge the debt until twenty years have elapsed. Kátyáyana:[6] If the father be at home, but

1—Digest 1st, 385. 2—Digest 1st, 384.

3—Digest 1st, 265-6, and note. Reports 2nd, 9.

4—Digest 1st, 268. Reports 2nd, 200. Colebrooke on Obligations, p. 25, and Strange's Elements, 2nd, 414.

5—6—Digest 1st, 277. Reports 2d, 57.

afflicted with a chronic disorder, [though not without hope of recovery], or absent, his debt shall be paid by his sons, after a lapse of twenty years. The word *absent* includes the sense of 'dead,' as well; even as Vishṇu says:[1] "If he who contracted the debt should die, or become a religious anchoret, or remain abroad for twenty years, that debt shall be discharged by his sons or grandsons, but not by remoter descendants, against their will.

Sons of debtors how to act.

14. Nárada:[2] "A father being dead, his sons, whether after partition or before it, shall discharge his debt in proportion to their shares; or that son alone who has taken the burden upon himself. Kátyáyana: If any debts exist against the father, his son shall not take possession of his effects. They must be given to his creditors, and if he die *without wealth*, still his son must pay his debts." *Wealth*, must be connected to *without*; the meaning is '[if he die] without wealth.' Bṛhaspati:[3] "The father's debt must be first paid, and next a debt contracted by the man himself; but the debt of the paternal grandfather must even be paid before either of those."

CLXXXI.

Debts not recoverable from sons.

15. Yájñavalkya:[4] "A son need not pay, in this world, money due by his father for spirituous liquors, for lustful pleasures, for losses at play; nor what remains unpaid of a fine, or toll [Çulka]; nor anything idly promised." Bṛhaspati:[5] "The sons are not compellable to pay sums due by their father for spirituous liquors, for losses at play, for promises made without any consideration, or under the influence of lust, or of wrath; or sums for which he was a surety;[6] or a fine, or a toll [Çulka], or the balance, of either." Uçanas declares:[7] "A fine, or the balance of a fine as also a bribe [or toll, Çulka] or the balance of it, are not to be paid by the son, neither shall he discharge debts improper, [not sanctioned, by law or custom."]

Order of those liable for a man's debts.

16. The order of those bound to pay the debts (of one deceased) is thus told by Yájñavalkya:[8] "He who has received the estate, must pay the debts of it; and in like manner, he who takes the wife [of the deceased]; or the son, whose [father's] assets are not held by another [ananyáshrita]: but of one having no son, the other heirs [Rikthinah, must pay the debts: or, may levy them, para. 18.]" He is said to *receive* the estate legally, who does so, even when there is a son of the deceased in existence, but disqualified by some disheriting defect, as if he be an eunuch, or the like; but illegally, when he usurps

1—Digest 1st, 266.

2—Digest 1st, 267. Colebrooke on Obligations, pages 25 and 152, particularly.

3—Digest 1st, 265.

4—Digest 1st, 31. Reports 2d, page 200.

5—Digest 1st, 305.

6—See Sec. 3d, paras. 2-3.

7—Reports 2d, 303, note.

8—Digest 1st, 270-71-75, and the readings there.

the estate of a father, whose son is free from any disqualification. The same [responsibility attaches] to him who takes the wife of another. The term, *assets not held by another,* may be understood in both ways, [of one who has taken his father's assets, as well as one whose father had no assets], by reason of the absence of an opponent endowed with the quality of alienation, as well as from the absence of an opponent only pointing out the quality of property.

Responsibility defined.

CLXXXII in each case.

17. And first of all, he who has received the estate; on failure of him, the person who takes the wife; and on failure of him, the son, possessed of unalienated wealth [ananyashrita]. If there be none, it must be paid by the grandsons, but the principal only. If they be not in existence, then the great-grandson, the wife, daughter, or other heirs [rikthinali], if they have received the estate, must pay the debt—such is the meaning. It is not to be paid by the great-grandson, the wife, or the others, if they have not taken the estate. But receipt of ever so small a portion of the estate, imposes the liability of liquidating the debts, to whatever amount. For there is no such law, as [that payment shall follow only on receipt of property] equal or more than equal [to the debt to be paid.]

Heirs of a creditor can recover.

18. The wife, daughters, and other heirs to a creditor dying without male issue, being entitled to receive his estate, may levy his debts from his debtor. This is another meaning of the latter part [of the text, para. 16].

Continuation of the subject.

19. Vishnu:[1] "He who takes the estate of one whether leaving a son or no male issue, must pay his debts." This is the meaning. Brhaspati:[2] "Even so, the person who takes the widow shall be liable for the debt, on failure of successors to the estate." Kátyáyana:[3] "The judge shall compel a son to pay the debt of his father, provided he be involved in no distress, be capable of property, and liable to bear the burden; but in no other case shall he compel the son to pay his father's debts." "First let him who takes the estate pay; after him, the son: if there be no son, or he be utterly destitute of means, then he who takes the wife." Nárada:[4] "But if a woman take the protection of another man, carrying her riches and her offspring, he must pay the debt of her husband, or abandon such a woman." Kátyáyana:[5] "A debt which has been contracted by indigent and childless vintners, and the rest must be paid by him, who has the care of their wives."

CLXXXIII.

Nárada says:[6] Of the successor to the estate, the

1—It would seem that some text of Vishnu had been omitted here, and that the succeeding passage was the commentary, but all the copies read it in this way.

2—Digest 1st, 274.

3—Digest 1st, 273.

4—Digest 1st, 330.

5—Digest 1st, 325.

6—Digest 1st, 272. Reports 1st, p. 158, note 3

guardian of the widow, and the son, he who takes the assets becomes liable for the debts; the son, if there be no guardian of the widow, nor a successor to the estate; and the person who took the widow, if there be no successor to the estate, nor son." Or, the meaning of the last part is, 'that if there be no son possessed of wealth, then he who takes the widow must pay the debts of the deceased;' by reason of the former quoted text of Yájñavalkya, [para. 16].

Debts binding on the head of the family, when contracted for its use by others.

20. Kátyáyana says:[1] "Debts incurred for domestic uses, by the slave, wife, mother, or disciple, of one gone to a far country, or deceased, and also by his son, must be paid, so says Bhrgu." And Yájñavalkya holds:[2] "A woman shall not pay debts incurred by her husband or son; neither a father those of his son, nor a husband those of his wife, unless contracted on account of the family." Kátyáyana: That must be paid, which may have been verbally promised, as well as what has been engaged for to another." Nárada:[3] "A father must pay the debt of his son, contracted in a time of distress." Yájñavalkya:[4] "If the wife of a herdsman, a vintner, a dancer, a washerman, or a hunter, contract a debt, the husband shall pay it, because his livelihood chiefly depends on the labour of such a wife." The same author says:[5] "A debt acknowledged [by her husband], or contracted by her jointly with her husband or son, or contracted by the woman herself, must be paid by a wife [or mother;] no other debt shall a woman be compelled to pay." And even if not acknowledged, she shall still pay it, if she have received his estate: for, thus says Kátyáyana:[6] "If a wife be thus addressed by her lord at the point of death, [or just before a long journey], 'Such a debt must be paid by thee,' she must pay it, however unwilling, if assets were left in her hands." Nárada:[7] "But if a woman who has male issue, [but no several property], desert her son, and recur to another man, her son alone must pay the whole debt." This however refers particularly to a son who has got possession of his father's wealth. Nárada:[8] "A debt contracted before partition by an uncle, or a brother, or a mother, for the support of the family, all the parceners or joint-tenants shall discharge."

CLXXXIV.

Heirs of creditors how to recover.

Appropriation of the debt, in default of them.

21. Should neither [the creditor, nor] his sons nor other relatives, be in existence, the modes of obtaining payment are as declared by Nárada:[9] If a creditor of the priestly class be not present but have issue, the king shall cause the debt to be paid [to them;] if he have no issue, to his near kinsman [Sakulya;] if he leave none who are near, to those who are distant [paternal

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1—Digest 1st, 17. Cole. on Oblig. 24-28-31-232. Strange's Elem. 1st, 275.

2—Digest 1st, 313. Reports 2d, 203. Cole. p. 28-9.

3—Digest 1st, 298.

4—Digest 1st, 317. Cole. on Oblig. 29. Strange 1st, 276.

5—Digest 1st, 314.

6—Digest 1st, 315, where it is attributed to Nárada.

7—Digest 1st, 329.

8—Digest 1st, 284.

9—Digest 1st, 335.

and maternal, Bandhu :] If he leave no heirs, near or distant, [nor persons connected by sacred studies,] the king shall bestow it on worthy priests; but if none such are present, let him cast it into the waters : [the debts of other classes, in similar circumstances, he may seize for himself."] Prajápati also says : "If there be no distant kinsmen, let it be paid to some twice-born man, or be cast into the water : When cast into the water or into the fire, that money is carried to the account of [the deceased, or of] his ancestors in a future state." If however an owner should appear to claim money [which is to be so] thrown into the fire, or the like, he shall obtain it.

Reservation.

CHAPTER VI.

Of Deposits,—Nikshepa.

Deposits.

CLXXXV.

Of two kinds, undefined, and specified.

1. NÁRADA :[1] "Where a man bails any of his effects to another, in whom he has confidence, and from whom he has no doubt of receiving his property again, it is a deposit, which the wise call Nikshepa." :[2] When a thing is deposited, under seal, without mentioning its quantity; if its kind and form be unknown, it is considered as an Upanidhi: but the wise call a specified deposit Nikshepa."

Preservation and restoration of them.

2. Bṛhaspati :[3] "The merit of one who preserves a deposit, or protects a dependant, is the same with the merit of him who gives golden vessels or clothes."[4] "The very thing bailed must be restored to the very man who bailed it, in the very manner in which it was bailed: it must not be delivered to his heir, apparent or presumptive." *Deposit,* a thing bailed. *Not to his heir,* but to the bailer, in his own person. Manu :[5] "He who restores not a thing really deposited, and he who demands what he never bailed, shall both be punished as thieves: or shall pay a fine equal to the value of the thing claimed."

Rules in case of damage, or loss.

3. Bṛhaspati :[6] "Should the bailee suffer the thing bailed to be destroyed by his negligence, while he keeps his own goods with very different care, or should he refuse to restore it on demand, he shall be compelled to pay [the value of] it with interest." *Different care,* preserving his own property. But if his own property should at the same time suffer injury, through that act of negligence, he is not to blame. Yájñavalkya :[7] "If the depositary, of his own accord [without the consent of the owner,] use the thing

Or use of them.

1—Digest 1st, 401. Strange's Elem. 1st, 280.

2—Digest 1st, 403. For "deposits under seal," see Essay on Bailments, p. 38. Strange 1st, 282. For a "deposit," see Essay on Bailments, p. 22, note 4.

3—Digest 1st, 416. Strange's Elem. 1st, 281.

4—Digest 1st, 415-16. Strange's Elem. 1st, 280.

5—Chap. 8th, v. 191. Digest 1st, 432. q v.

6—Digest 1st, 420. Strange's Elem. 1st, 278-282. Essay on Bailments, p. 6-46.

7—Digest 1st, 428. Strange's Elem. 1st, 283.

deposited, he shall be amerced, and compelled to pay the price of the thing with profit." *Use*, make a livelihood by employing it in his worldly transactions for the sake of gain.

Interest on them.

CLXXXVI.

And punishment for fraud.

4. *Profit*, interest; of which a distinction is mentioned by Kátyáyana:[1] "A deposit, the balance of interest, a commodity sold, and the price of a commodity purchased, not being paid after demand, shall bear interest at the rate of five in the hundred." Manu:[2] ["For the first offence], the King should compel a fraudulent depositary, without any distinction between a deposit under seal or open, to pay a fine equal to its value."

Exemption for the act of God or the king.

Re-delivery to the heirs of the bailer.

5. Bṙhaspati:[3] "If it be destroyed by the act of God or of the king, together with the goods of the bailee, there is no fault in him." Yájñavalkya:[4] "But he shall not be compelled to replace that [deposit] lost by the act of God or the king, or seized by robbers." Manu:[5] But if a depositary, by his own free act, shall deliver a deposit to the heir of a deceased bailor, he must not be harassed, either by the king or by the kinsmen [of the deceased"]. *Heir*, a near relation. The sense is this, 'he must not be harassed, without proof, for the sake of more property [than was delivered.']

The above rules applied to all species of bailments.

CLXXXVII.

6. The whole of the above laws relating to deposits, are also otherwise collectively applied to other bailments. Bṙhaspati:[6] "In the case of a deposit for delivery [anváhitam,] a loan for use [yáchitam,] a bailment with an artist [çilpí nyása], and a pledge, [bándhaka] the same law is enacted, and likewise in the case of a person received under protection [or a dependant.]" A *deposit for delivery*, is, when a chattel is given into the hands of another, saying, 'Such an one deposited it with me, and I pray you give it to him.' *Loan for use*, ornaments or the like, borrowed for the sake of show at a marriage, or other ceremony. *A bailment with an artist;* what has been openly deposited with goldsmiths, or such persons, to be made into earrings or the like. Nárada:[7] "This very law is enacted in the case of loans for use [yáchitam,] deposits for delivery [anváhitam] and the like; bailments with an artist, [çilpí nyása][8] sealed deposits[9] [upanidhi,] bailments in the form called nyása,

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1—Digest 1st, 427. 2—Chap. 8th, v. 192. Digest 1st, 432.

3-4—Digest 1st, 421-2. Essay on Bailments, 104, b. note. Strange 1st, 278-81-294.

5—Chap. 8th, v. 186. Digest 1st, 420. 6—Digest 1st, 410.

7—Digest 1st, 408. Strange's Elem. 1st, 271. Essay on Bailments, 36.

8—Essay on Bailments p. 22, note 7, and p. 90-91. "Hiring of work." Strange 1st, 293.

9—Strange's Elem. 1st. 282. Essay on Bailments, p. 38. See Digest 1st, 402. Yájña-valkya.

and re-bailments [pratinyása."] *Re-bailment*, that is, when the depositary re-bails to another the very thing which had been bailed or deposited with him by the original owner.[1]

Compensation in certain cases of loss by the act of God.

7. Compensation must in some cases be made by the artist, even when the goods bailed have been destroyed by the act of God or the king; for Kátyáyana says:[2] "If the artist keep the thing bailed, after the time agreed on for working it [into ornaments and the like,] he shall be forced to pay its value, even though it be destroyed by the act of God."

Rate of valuation for clothes.

Punishment for unauthorized use of them.

8. Nárada: "An eighth share of the value is lost, of clothes once washed; when twice washed, a quarter; thrice, a third; and when four times washed, a half; but after more than half the value is gone, it shall be valued in order, according to the damage of each quarter share." Yájñavalkya: "The washerman who wears on his own person, the clothes of his employer, shall be fined three paṇas. But if they be sold, or let out to hire, or pledged, or lent out by him, [he shall be fined] ten paṇas." *Let out to hire*, what has been given to another for receipt of hire. *Pledged*, put out in pawn.

Rate of valuation for metals.

9. The rules respecting loss incurred in melting all metals, except gold, are thus expounded by the same author:[3] "Gold undergoing the action of fire is nothing diminished thereby; the loss on silver in a similar operation is two paṇas per centum; in tin and lead, eight; in copper, five; and ten in iron." Whenever the loss [in the weight] of [returned metal, whether] silver or other, is greater [than these rates,] a fine must be imposed on the goldsmith, or other [workman.]

Farther remarks on valuation of manufactures.

CLXXXVIII.

10. A distinction as to the increase in weight of thread, furnished the workman for the purpose of making up certain clothes and the like, is laid down by the same author: "Ten palas[4] per centum shall be the increase in [weight of] cloths made of woollen or cotton thread. In cloths of middling quality, five palas per centum must be the increase; but in those of fine quality, three palas are declared to be the standard." In some kinds, decrease is allowable, by the same authority, who says: "In embroidered cloths, as well as those made of a hair, a thirtieth share is declared [to be admissible] as loss [in weight,] but there is to be neither loss nor

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1—Strange's Elem. 1st, 289-90. 2—Digest 1st, 446. Strange 1st, 293.

3—The following rules are not unknown to the English law, which has several statutes to prevent fraud in similar cases. See Tomlins, tit. "Manufacturers." "Gold and silver," "Wire-drawers."

4—As. Res. 5th, 91. Wilson ad verb.

gain, in the weight of those made of silk, or of the bark of a tree." *Embroidered*, by describing the Svastika, or other patterns on ready prepared cloths, or other material, with coloured thread or the like.

Rules regarding contracts for work.

11. In work, when a certain term is specified, and the workman fail to send home the article when demanded within the term, then, even if damage happen to the goods, the workman is not to blame;[1] for the same author says: "If, having fully considered the nature of the work, a certain time be fixed for its delivery; in that case, should the owner demand it when only half finished, and not obtain it, still it shall not be awarded to him." The exceptions are declared by the same author:

Exceptions.

If, when the term has elapsed, and the work is finished, the workman should not deliver it when demanded of him, and it be afterwards damaged, or stolen; the person who would have received the article, shall obtain the value of it." And again: "He who, having received a thing borrowed for his use, shall not restore it when demanded back, shall be seized, and by force compelled to give it up; and let a fine be imposed, if he do not then restore it.

Punishment of a fraudulent borrower.

1—Essay on Bailments, 90-91. "Hiring of work."

CHAPTER VII.

Sale without Ownership,—(Asvámivikraya.)

Sale without ownership.

CLXXXIX.

1. VYA'SA:[1] "When the goods of another are sold in the owner's absence, [whether they had been] borrowed for use, bailed for delivery, deposited under seal, or stolen, it is a sale without ownership." Kátyáyana:[2] "Let the judge declare void a sale, a gift, or a pledge, made without ownership." *Without ownership,* is here a past participle, and used separately, to denote the nature of each [act of sale, gift or pledge.]

Unauthorized sale, gift, or pledge, void at law.

Circumstances invalidating a purchase.

2. Nárada:[3] "An open purchaser is clear of imputation, but a purchase in secret is a theft":[4] "He who buys any thing, from a slave without authority from his master, from a man not of a good character, in private, at a very low price, and at an unfit hour, becomes the accomplice of him." *The accomplice of him,* that is, of the thief.

Proof, by the owners of lost property.

3. Yájñavalkya:[5] "The right to a thing lost [and then found,] must be proved, by the mode of acquisition, or by [evidence of] possession: otherwise, on failure of proof, a fine equal to a fifth part shall be paid to the king." *Fifth part,* a fifth share of the lost property. When the evidence given by the witnesses adduced by the loser, is contrary to his claim, he must be fined in double the amount of the lost property, for Vyása says:[6] "If the plaintiff prove not his loss by witnesses, he shall in that case be compelled to pay double its value; and the purchaser is entitled to the thing."

Production of the seller indemnifies the purchaser.

4. He also lays down the course to be pursued by the buyer:[7] "But if the seller be produced, the purchaser shall by no means be condemned; for then the law suit must be continued between the owner of the thing lost and the seller. Brhaspati:[8] "When the seller has been made to appear, and has been condemned in the law-suit, let the judge

1—Digest 1st, 453. Strange's Elem. 1st, 289-302-3.
2—Digest 1st, 474.
3—Digest 1st, 512.
4—Digest 1st, 491.
5—Digest 1st, 498.
6—Digest 1st, 499.
7—Digest 1st, 502.
8—Digest 1st, 479.

cause him to pay the price to the buyer, and a fine to the king; and restore the property to its owner." Kátyáyana:[1] "Let time be given to the buyer for the production of the seller, according to the length of the road:"[2] "If he cannot produce the seller, let him even justify the purchase; and if the purchase be justified, he shall in no wise be blamed by the king." "The claimant should first prove his property by evidence of kinsmen; next, to clear himself, the buyer should prove a fair purchase by [similar] witnesses, his own kinsmen."

CXC. Time for the purpose to be allowed, and proceedings in default.

5. "Even if the purchaser clearly prove the sale, still the property must revert to the former owner who lost it." Moreover, Manu:[3] "But if the vendor be not producible, and the vendee prove the public sale, the latter must be dismissed by the king without punishment; and the former owner, who lost the chattel, may take it back, on paying the vendee half its value." *Not producible*, not to be pointed out. It alludes to the property being assayed [as it were by the buyer], by [the test of] a public sale.

The first owner recovers in all cases, under certain rules.

6. Kátyáyana:[4] "The defendant, not clearly proving an open sale to him, or not pointing out the seller, shall be made to deliver the thing claimed, and to pay a fine." Bṛhaspati:[5] If a purchase be made before a public assembly [of traders], with the knowledge of the king's officers, but from a seller whose dwelling-place is unknown; or if a claim be made after the death of the seller, [though known], the owner of the thing may recover his own property, on paying half the price given; half the value is lost to each of them: such must be the decision." Maríchi:[6] But if he cannot produce the seller, his dwelling place being unknown, the loss shall be borne equally by the buyer, and by the [former] owner who had lost the thing." *Dwelling place*, the spot where the seller resides.

Rules in respect to publicity of sales, and sellers' places of residence.

7. Nárada: "For the possession of women, or cattle, as well as land, leave must be distinctly granted. He who enjoys them without leave, shall be forced to pay the hire of such enjoyment." *Granted*, ordered. The *hire of enjoyment*, rent, similar to the hire.

Women, cattle, and land. CXCI.

8. Yájñavalkya:[7] "The owner of a thing lost, or stolen, which had been seized by the officers of the police or revenue, whether by sea or land, shall take it, [if claimed] within one year; after that time, the prince [shall retain it]." As for this text of Manu[8]: "Three years let the king

Term for restoration of escheated property.

1—Digest 1st, 484. 2—Digest 1st, 501.
3—Chap. 8th, v. 202. Digest 1st, 502. 4—Digest 1st, 491. 5—Digest 1st, 508.
6—Digest 1st, 510. 7—Macnaghten, p. 425-6. 8—Chap. 8th, 30.

detain the property, of which no owner appears, [after a distinct proclamation]: the owner, appearing within the three years, may take it; but, after that term, the king may confiscate it," it is only with reference to property belonging to a Çrotriya, [one conversant in the Vedas]. The same author says[1]: "The king may take a sixth part of the property so detained by him, or a tenth, or a twelfth, remembering the duty of good kings." Then, in the first year, he must give up the whole of the property. In the second year, let him give it up, after deducting a twelfth share; in the third year, a tenth; in the fourth, a sixth. After that term, the king may confiscate it; this only in case of its owner not appearing after three years: and then it may be appropriated by him only for his expenses; but if the owner then make his appearance, it must be make good to him, even if expended: Thus says the Mitákshará. This however, only if the owner be unknown; for if it be known, 'that such 'an one went away, forgetfully leaving the said property behind,' then he shall get it back, even after three years. Even the prince possesses no right of disposing of it, though he may at the same time take some portion, however small, as his share.

With the share to be reserved by the king.

Exception in the owner's favor.

9. Yájñavalkya propounds the remuneration for trouble of the finder, keeping during one day, the stray animals of another: "The owner of stray animals must pay four paṇas, if the animal be of the species with solid hoofs; five paṇas for a human creature; two for every buffalo, camel, cow, or animal with cloven hoofs; but only a fourth, for every goat, or sheep." But their food must be paid for besides.

Remuneration of the finder of strays.

CXCII.

10. On the subject of treasure trove, [Nidhi] Yájñavalkya says:[2] "Let the king obtaining unclaimed property [Nidhi] give half to Bráhmaṇas: but a learned Bráhmaṇa may keep the whole, for he is lord of all." "And the king shall receive a sixth part of unclaimed property occupied by any other person." "In case of its being discovered without information from the finder, he must be made to pay a fine as well [as the sovereign's share]." If however, any one prove by mark, measure, or the like, that the property found belongs to himself, in that case let the prince deliver it to him, after giving a twelfth share to the informer, and taking his own sixth. This is stated by Manu[3]: "When a man claims treasure trove, declaring truly, 'This is my own property,' the prince shall still retain his own sixth share, and also a twelfth." This *twelfth*, being that assigned for the informer.

Law in regard to treasure trove.

1—Chap. 8th, 33.

2—Macnaghten, 437. Digest 1st, 461.

3—Chap. 8th, v. 35.

Restoration of stolen property to the owner.

CXCIII.

11. On the subject of property carried off by thieves, the same author says :[1] "Let property carried off by thieves be restored by the prince to the owner, of whatever class he may be; if the prince take possession of it, he partakes of the crime with the thieves." In case he be unable to recover it from the thieves, Kṛshṇa Dvaipáyana [Vyása] says :[2] "Should the prince be unable to recover stolen property from thieves he shall make it good from his own treasury, provided he be powerless." Thus has been expounded the law of sale without ownership.

1—Chap. 8th, v. 40. Macnaghten, 437.

2—Macnaghten, 437.

CHAPTER VIII.

Concerns among Partners,—(Sambhaya Samutthánam.)

Concerns among partners.

1. NA'RADA:[1] "When traders, or others, jointly carry on business, it is called a 'concern among partners;' a title of judicial procedure."

Mutual obligations.

2. Bṙhaspati:[2] "Whatever property a man lends, with the assent of many, or whatever business he so causes to be performed, is considered as the act of all the partners."[3] "They are declared to be competent arbitrators, and witnesses for each other, in doubtful cases of deceit, provided they bear no enmity to either party." "Should one of the partners be justly suspected of fraud, in buying, selling, [and the like], he may be cleared by ordeal: such is the rule in all controversies."

CXCIV.

Provision for reward and punishment, of partners.

3. Yájñavalkya:[4] "A man of crooked ways let the other partners expel without profit; and let a partner unable to act, appoint another man to act for him":[5] "If one partner does what the others forbid, or disapprove, or if he be negligent, [in doing what they allow], and the [common] property be injured, he shall make it good; but he who preserves it from [robbers or other] misfortune, shall receive a tenth part of it [as his reward.]"

Order of shares in a partnership.

4. Kátyáyana:[6] "If four kinds of artisans be jointly employed; young apprentices, more experienced scholars, good artists, and teachers, they shall receive, in order, one share, two, three, and four shares, of the pay, or profit." *Young apprentices*, persons learning their trade. *More experienced scholars*, those who are well versed in it. *Good artists*, thoroughly skilled [in every branch]. *Teachers*, persons making new inventions. Bṙhaspati:[7] "Where several men jointly build a house

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1—Digest 2d, p. 1.
3—Digest 2d, 8-9.
5—Digest 2d, 12.
2—Digest 2d, 66-7.
4—Digest 2d, 17-34.
6—Digest 2d, 78.
7—Digest 2d, 80, where it is 'utensils of leather,' Chármika, for Dhármika; some of the manuscripts had the other word.

or a temple, or dig a pool, or make sacred utensils, let the chief workman receive a double share of the pay." The same author adds[1]: "This has been ordained by wise legislators for a band of musicians: let him who marks the time skilfully, take a share and a half; and let the singers have equal shares."

Losses to be borne in common.

5. Kátyáyana: "If men, [who have joined together in any business], but are dispersed abroad, meet with imprisonment, then, whatever is paid for the sake of their liberation, shall be borne by them according to the share of each."[2] "The law [before] propounded relates to all partners whether merchants, husbandmen, robbers, [commissioned in war time], or artizans, when they have made no special agreement for their shares."

1—Digest 2d, 83.

2—Digest 2d, 92.

CHAPTER IX.

Subtraction of Gift.—(Dattápradánikam.)

Subtraction of gift. CXCV.

1. NÁRADA:[1] "When a man desires to recover a thing which was not duly given, it is called subtraction of what has been given; [and this is] a title of administrative justice." *Not Duly given*, is a past participle, to denote the quality of the transaction, and signifies 'prohibited.' The same author adds:[2] "In civil affairs, the law of gift is four-fold; what may, or may not, be given; and what is, or is not, a valid gift."

Unalienable property.

2. Nárada:[3] "What is bailed for delivery, what is lent for use, a pledge, joint property, a deposit, a son, a wife, and the whole estate of a man who has issue living, the Sages have declared unalienable, even by a man oppressed with grievous calamities, and [of course], what has been promised to another." Now, as a man has no property in his wife or son, it is only a repetition of the prohibition against their alienation, in conformity to the Vedas. 'Neither between, nor in the heavens above.' From this, and from the law of Yájñavalkya:[4] "In distress for [the maintenance of] the family, [or, the family not opposing the gift, on account of poverty], property may be given away, except a wife and son," the purport of the above is confirmed by the reservation of a wife and son. The non-existence of property in a wife or son has been already examined in the discussions on property.

Gifts of unalienable property are void.

3. In case of their being alienated, not only will the act be untenable in law, but moreover penance also must be performed; for, in treating of this very subject, Daksha says:[5] "The man who gives them away is a fool, and must expiate the sin by penance." So Manu:[6] "He who receives what may not be given, and he who gives away the same, shall both be punished like thieves, and be both caused to pay the fine of Uttama sáhasa."[7]

1—2—Digest 2d, 94-5.
3—Digest 2d, 97-8. Reports 1st, 293-4, 2nd, 428. See Chapter 6th, para. 6th.
4—Digest 2d, 128. Reports 1st, 69. 2d, 428. See Chap. 4th, Section 1st, para. 12.
5—Digest 2d, 110. 6—Not found in his Institutes.
7—See Chap. 18th, para. 2d.

4. What things may be given, is declared by Bṛhaspati:[1] "A man may give what remains, after the food and clothing of his family." What must without fail be given, is told by Kátyáyana:[2] "He who delivers not a present which he has promised to a Bṛahman, shall be compelled to pay it as a debt, and incurs the first amercement."

Alienable property.
CXCVI.

5. Gautama:[3] "A man shall not give, even what he has promised, to a person whom the law declares incapable of receiving." Gift or sale of a livelihood [Vṛtti] are thus forbidden by Vyása:[4] "They who are born, or yet unbegotten, and they who are still in the womb, require the means of support: no gift or sale should therefore be made."

Gift and sale in what cases prohibited.

6. Nárada[5] thus propounds the distinctions, of gifts, valid and void: "Valid gifts are declared to be of seven sorts; void gifts assume sixteen forms."[6] "They who know the law of gifts, declare, that things once delivered as the price of goods sold; as wages; for [the] pleasure [of hearing poets, musicians, or the like;] from natural affection; as an acknowledgment to a benefactor; as a nuptial gift to a bride [or her family;] and through regard, cannot be resumed." *Regard*, religious purposes:[7] "What has been given by men agitated with fear, anger, lust, grief, or [the pain of] an incurable disease; or as a bribe, or in jest, or by mistake, or through any fraudulent practice, must be considered as ungiven: So must anything given by a minor,[8] an idiot, a [slave or other] person not his own master; a diseased man, one insane, or intoxicated, or in consideration of work unperformed:"[9] "But what shall be given ignorantly, to a bad man, called a good one, or for an illegal act, must be considered as ungiven."

Gifts valid.

Gifts void.

7. *Grief*, pain, misfortune; the interpretation is, afflicted with pain created by fear or other impulse: Whatever has been given by one excited by *fear* of beating or the like, or by other causes; and in the same manner, what is given with the intention that it may be expended, from *anger* against brothers or other persons [the rightful heirs: by *mistake*, as, when gold is given by mistake, when the intention was to give silver; *through fraudulent practice*, as if, 'The king were about to give a cow to Devadatta, and it be given to some other

Terms of the text defined.

CXCVII.

1—Digest 2d, 131. 2—Digest 2d, 170. 3—Digest 2d, 172.

4—Digest 2d, 113. Jim. Vá. 21. Mit. 257. Reports 2d, 428.

5—Digest 2d, 95. 6—Digest 2d, 175.

7—Digest 2d, 181. Reports 1st, 31. Colebrooke on Obligations, 26—45—48—56—232—243.

8—For "Minority," see Digest 1st, 293, 2d, 115. Cole. on Oblig. 26. Reports 2d, 57—117—147. An idiot, and an insane person, seem incapable also by English law. Cole. on Oblig. 227-28.

9—Digest 2d, 200. Cole. on Oblig. 58.

man, supposed to be the right person by his assuming the dress of Devadatta:' *by a diseased man*, one whose mind is unsettled by disease; by one intoxicated with any substance or liquor which produces drunkenness; or insane, by the effects of the air, or from any other cause. *Given*, bestowed; what is given to a person who fails afterwards in the performance of any act, the donor [at the time of giving it] thinking, 'This person will do my work:'[1] what has been given to those practising unlawful arts, under an idea that they will perform a lawful act: All these gifts may be reversed.

Such gifts may be resumed.

8. Kátyáyana:[2] "What has been given by men under the impulse of lust, or anger, or by such as are not their own masters, or by one diseased, or deprived of virility, or inebriated, or of unsound mind, or through mistake, or in jest, may be taken back." *Through lust*, for the sake of seducing another man's wife. *Deprived of virility*, [womanishly] timid. *Given through mistake or in jest*, means as a bribe [utkocha.]

Recovery prohibited, of a bribe once given.

Bribes defined.

9. [3] "If a bribe be promised for any purpose, it shall by no means be given, although the consideration be performed." "But if it had at first been actually given, it shall be restored by forcible means; and a fine of eleven times as much is ordained by the son of Gárga and by the son of Manu." The nature of a bribe is thus exhibited by the same author:[4] "Whatever is received for giving information of an [improper] acquaintance; of a criminal, of a man violating the rules of his class, or of an adulterer; for producing a man of depraved manners [ready to commit thefts or other crimes,] or for procuring a man to give false testimony. That is all denominated [utkocha] given on an illegal consideration."

CXCVIII.

Fraudulent acts to be annulled.

10. Manu:[5] "When the Judge discovers a fraudulent pledge, or sale; a fraudulent gift, and acceptance, or in whatever other case he detects fraud, let him annul the whole transaction." *Fraud*, circumvention. *Or in whatever other case*, that is, in whosoever business. The meaning is, the whole of that business in which fraud is detected shall be reversed. Kátyáyana:[6] "What a man has promised, in health or in sickness, for a religious purpose, must be given; and if he die without giving it, his son shall doubtless be compelled to deliver it." For a continuation of this subject, the Dvaita Nirnaya, written by Guru, must be referred to.

Legal promises binding, even on heirs.

1—This is better explained in the Mit. leaf 19th, page 2d, line 10th, "Further, what is given thus, 'This man will do this my work,' that is, from hope of a profitable return."

2—Digest 2d, 197. Reports 2d, 117.

3—Digest 2d, 195, Kátyáyana. Cole. on Oblig. 58. Strange's Elem. 1st, 274.

4—Digest 2d, 194.

5—Chap. 8th, v. 165, Strange's Elem. 1st, 285.

6—Digest 2d, 96.

CHAPTER X.

Of Service,—[Abhyupetya Çuçrushu].

Service.

CXCIX.

Servants of three degrees.

1. NA'RADA:[1] "When a man yields not the obedience he has promised, it is called a breach of promised obedience; which is a title of law." Servants are of three ranks, says Bṙhaspati:[2] "The soldier is the highest of servants; the ploughman is the middlemost; the porter is declared the lowest, and so is a servant employed in the business of the household." Nárada:[3] "He who shall be commissioned for affairs, or for the superintendence of the family, should be considered as a commissioned-servant; and he is also called a family-servant [in some instances]."

Slavery of all classes admitted, with exception of Bráhmans.

2. Kátyáyana:[4] "Bhṙgu admits the servitude of one who, being his own master, gives himself, as [the marriage of] a wife [self-given is acknowledged:] slavery should be limited to three classes; never can a Bráhmaṇa become a slave." The servitude of men of the military, commercial, and servile classes, who have forfeited their independence, may be in the direct, not in the inverse order of the classes." Nárada:[5] "In the inverse order of the classes, slavery is not legal." Kátyáyana:[6] "Where men of the three twice-born classes forsake religious mendicity, let the king banish a man of the sacerdotal class, and reduce to slavery a man of the Kshatriya or military tribe, says Bhṙgu." The taking the word Kshatriya or military class, intends the commericial and servile classes also, a part being put for the whole. The mode of banishing a Bráhmaṇa is thus explained by Daksha and Nárada:[7] "If a man, after assuming religious mendicity, abide not by his duty, let the king cause him to be lacerated by the feet of dogs, and immediately banish him."

1—Digest 2d, 204. 2—Digest 2d, 218.

3—Digest 2d, 220. See Bl. Com. 1st, 426. The English law admits four kinds.

4—Digest 2d, 254. See Bl. Com. 1st, 425, note 1. 5—Digest 2d, 253.

6—Digest 2d, 227. There is a variation in the reading of this text.

7—Digest 2d, 227.

What kinds of labour allowed and what prohibited.

3. Kátyáyana:[1] "But even a man of equal class must not reduce a Bráhmaṇa to slavery; yet a mild and learned man may employ in labour one inferior to himself in those qualities: still let not the highest twice-born man perform impure work." Manu:[2] "Both him of the military, and him of the commercial class, if distressed for a livelihood, let some wealthy Bráhmaṇa support, obliging them, without harshness, to discharge their appropriate duties." *Appropriate duties*, meaning respectable, and such as are suited to their class.

Illegal enslavement with the punishment awarded for it.

4. Kátyáyana:[3] "He who seizes a woman of the sacerdotal class, he who sells her, and he who enslaves a woman of family, impelled by lust, or causes her to be approached by another, shall be amerced, and that [enslavement] is null." "The man who treats as a slave the nurse of an infant child, or a free woman, or the wife of his dependent, incurs the first amercement." Vishṇu:[4] "He who employs a man of the most elevated class in servile duty, shall be fined in the highest amercement." Kátyáyana:[5] "And he who attempts to sell an obedient female slave [Bhakta],[6] though she resist the sale, and though he be not distressed, but able to subsist, shall pay the first fine."

Slaves enumerated.

5. The distinctions in slaves are laid down by Nárada[7]: "One born [of a female slave] in the house [of her master]; one bought; one received [by donation]; one inherited [from ancestors]; one maintained in a famine; and, like him, one pledged by a [former] master; one relieved from great debt; one made captive in war; [a slave] won in a stake; one [who has] offered [himself] in this form, 'I am thine; an apostate from religious mendicity; [a slave for a] stipulated [time]; one maintained in consideration of service [Bhakta], a slave for the sake of his bride; and one self-sold, are fifteen slaves declared by the law."

CCI.

Who of them are not capable of emancipation.

Exception.

6. [8]: "Of those [slaves], the first four are not [of right] released from slavery: unless they be [emancipated] by the indulgence of their masters, their servitude is hereditary. That low man, who, being independent, sells himself, is the vilest of slaves; he also cannot be released from slavery."[9] "Among those, whoever rescues his master from imminent danger of his life, shall be released

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1—Digest 2d, 254-5.

2—Chap. 8th, v. 411. Strange's Elem. 1st. 135.

3—Digest 2d, 258. 4—Digest 2d, 257. 5—Digest 2d, 258.

6—The word 'Bhakta' means also "serving for maintenance."

7—Digest 2d, 224-25. Colebrooke on Obligations, 26.

8—Digest 2d, 231. 9—Digest 2d, 241. Reports 1st, 372, note.

from slavery, and shall receive the share of a son." Yájñavalkya: "He who, having become a Sanyási, falls from that state, shall remain the slave of the prince during the rest of his life."

Slavery voidable, on what conditions.

7. Nárada:[1] "One maintained in a famine is released from servitude on giving a pair of oxen." "One pledged [is] also [released] when his masters redeems him, by discharging the debt:"[2]—[3] "Paying the debt with interest, a debtor is released from servitude:"[4] "One who offered himself in this form, 'I am thine;' one made captive in war, and a slave won in a stake, are emancipated on giving a substitute equally capable of labour:"[5] "A slave for a fixed period is also emancipated, by fulfilling the stipulated terms:"[6] "One maintained in consideration of service is immediately released on relinquishing his subsistence; and a slave for the sake of his bride is emancipated by divorcing his wife." *Substitute*, a surety, deputy. *Bride*, a female slave.

Slavery in what cases void, ab-initio.

CCII.

8. Yájñavalkya:[7] "One enslaved by force, and also one sold by robbers, is released from slavery." Nárada:[8] "One not his own master, who, having given himself [to one man] in this form, 'I am thine,' goes [to another], does not obtain his wish; the former owner may reclaim him." *One not his own master*, the slave of another. The word slave, used throughout on this subject, being not specially confined to the masculine gender, must therefore be understood as affecting all rules also for female slaves.

Reason for emancipating females.

9. A reason for enfranchising female slaves is declared by Kátyáyana:[9] "If a man approach his own female slave, and she bear him a son, she must in consideration of her progeny, be enfranchised with her child. *Progeny*, offspring; meaning, that she becomes thereby qualified for liberty."

Rite of emancipation.

10. Nárada:[10] "Let the benevolent man, who desires to emancipate his own slave, take a vessel of water from his shoulder, and instantly break it, sprinkling his head with water containing rice and flowers; and, thrice calling him free, [let the master] dismiss him with his face towards the

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1—Digest 2d, 243. The last half of the couplet is here omitted; it is as follows: "for what was consumed in a famine, is not discharged by labour [alone]."

2—Digest 2d, 245. Here again, the last half couplet is omitted: "but if [the creditor] take him in payment," he "becomes a purchased slave."

3—Digest 2d, 245. 4—Digest 2d, 246.

5—Digest 2d, 245. This should come in after "Paying the debt with interest," &c.

6—Digest, 2d, 247. 7—Digest 2d, 239.

8—Digest 2d, 237. The translation is varied here, to suit the gloss.

9—Digest 2d, 247. 10—Digest 2d, 248.

east: thenceforward let him be called 'one cherished by his master's favour;" his food may be eaten, and his favours accepted; and he is respected by worthy men.

How any free woman may become a slave.

11. Kátyáyana:[1] "A free woman, or one who is not a slave [of the same master; for this word, adási, may bear either sense], becoming the bride of a slave, also becomes a slave [to her husband's owner]; for her husband is her lord, and that lord is subject to a master." "Whatever goods belong to a slave, his master is declared by law to have dominion over them."[2]

1—Digest 2d, 252-3.

2—Digest 2d, 252. The last hemistich is here [it would seem fraudulently] omitted: but that matter has no right to the goods which are acquired by public sale. See particularly Colebrooke on Obligations, 30-31-232.

CHAPTER XI.

Non-payment of Wages,—(Vetanádánam.)

Non-payment of wages.

CCIII.

1. NÁRADA:[1] "The rule and the act of payment, and non-payment, of the wages or hire of servants, are now declared, called in law, Non-payment of wages or hire.

Rates of wages, when not stipulated.

2. Yájñavalkya:[2] "He who causes work to be performed without fixing the wages, shall be compelled by the king to give a tenth part of the [profit arising from] commerce, cattle, or grain."

According to the work.

3. This relates to light work—For if the work be heavy, Bṛhaspati says:[3] "Let the man who guides the ploughshare have a third or a fifth part [or the grain]." "Let (the ploughman), to whom food and vesture are given, take a fifth; and let him who is supported by the profit (alone), receive a third part of the grain produced." *Food and vesture*, a servant boarded with receipt of food and clothes.

Rules affecting the servant in regard to work.

4. Nárada:[4] "A servant who refuses to perform the work he has undertaken, shall be compelled to fulfil his agreement, first paying him his wages; but, if he persist in his refusal after receiving his wages, he shall forfeit twice their amount." Manu[5]: "That hired servant or workman, who, not from any disorder but from insolence, fails to perform his work according to his agreement, shall be fined eight raktikás,[6] and his wages or hire shall not be paid." He adds:[7] "Yet, whether he be sick or well, if the work stipulated be not performed [by another for him, or by himself], his whole wages are forfeited, though the work want but a little of being complete."[8]: "But, if he be really ill, and when restored to health shall perform his work according to his original bargain, he shall receive his pay even after a very long time." So

CCIV.

1—Digest 2d, 259.

2—3—Digest 2d, 261-64. See Tomlins, and Burn, tit. "Servants."

4—Digest 2d, 267. 5—Chap. 8th, 215. Digest 2d, 269. 6—As. Res. 5th, 91.

7—Chap. 8th, 217. Digest 2d, 270. 8—Chap. 8th, 216. Digest 2d, 271.

Vishṇu:[1] "A servant, [or workman by time], who leaves the work before the expiration of the full term, shall forfeit the whole price of his labor, and pay one hundred paṇas to the king."

Rules affecting the master.

Damage or loss by servants, how to be estimated and when good.

5. Again: "If the master dismiss the servant before the full time has passed, he shall pay him his whole wages, and a hundred paṇas to the king, unless the servant were in fault." Vṛddha Manu:[2] "A servant shall pay the full value of what he has lost by mere inattention; twice the value of what he has lost by gross negligence or malice; but he shall not be forced to pay any thing for what robbers have seized, for what has been burned, or for what an inundation has carried away, [unless he were himself blameable]. '*Malice*, enmity. *Carried away*, swept away. Yájñavalkya:[3] "He who raises obstacles on solemn occasions shall pay twice the amount of his wages; one who declines when on the road [shall be compelled to pay] the seventh part of the wages, or the fourth part, if he leave him on the way." Vṛddha Manu:[4] Should a merchant [having hired a servant for a certain journey,] sell his goods by the way, and discharge the servant, his [wages] must be paid; but the servant shall receive half only of the hire." Kátyáyana:[5] "And if the goods be stopped, or seized on the way, the servant shall receive wages for so much of the way as has been passed by him:"[6] "The master, who leaves in the way a tired or sick servant, without taking care of him in a village for three days, shall pay the first or lowest amercement." *Be stopped*, be attached by the king's order.

Cases of dispute about wages and discharge.

Liability of the master.

CCV.

6. Bṛhaspati:[7] "If a servant, by the command of his master, and for his benefit only, do an improper act, the offence shall be imputed to the master."[8] "The master, who pays not the hire of labour after the work is performed, shall be compelled by the king to pay it, as well as a proportionate amercement."

Rules relating to hire, of carriages, and beasts of burthen.

7. Nárada:[9] "The owner of goods, who hires carriages or beasts of burden, and takes them not, shall be compelled to pay a fourth part of the hire; or the full amount, if he leave them on the road." *Carriages*, conveyances of all sorts. *Beasts* of burden; horses and other animals, carrying burthens on their own

1—Digest 2d, 271. Reports 2d, 237. 2—Digest 2d, 272.

3—Digest 2d, 274-75. 4—Digest 2d, 277. 5—Digest 2d, 278.

6—Digest 2d, 279. Moore's Index, Term Reports 1st, 76. Tomlins, and Burn, tit. "Servants."

7—Digest 2d, 273. Bl. Com. 1st, 429. "Qui facit per alium facit per se." Tomlins, tit. "Servants."

8—Digest 2d, 270. 9—Digest 2d, 277, q. v.

[backs]. Kátyáyana:[1] "He who hires, at a fixed price, an elephant, a horse, a bull or cow, an ass, or a camel, shall be made to pay for the hire of it as long as he delays to restore the cattle, having used it according to agreement." Nárada:[2] "He who dwells in a house which he built on the ground of another man, and for which he pays rent, shall take with him, when he leaves it, the thatch, the wood, the bricks, and the like. But if he live, without paying rent, on the ground of another, and there be no agreement, he shall, when he quits it, give the thatch, the timber, and the bricks which he has expended, to the landlord." *Rent*, hire.

Rules for Landlord and Tenant.

1—Digest 2d, 283, where it is attributed to Nárada.

2—Digest 2d, 281. q. v. Strange's Elem. 1st, 293.

CHAPTER XII.

Breach of Compact.—(Samvida Vyatikrama.)

Breach of Compact. CCVI.

1. NA'RADA:[1] "The general rule, settled among irreligious men [Pákhanda], and among citizens [Naigama], and the like, is named a compact; and the title of law concerning disputes arising thereon, is called Breach of compact." *Pákhanda,* persons pursuing commerce or the like, [and] deviating from the ordinances of the Vedas. *Citizens,* those who do not act contrary [to the Vedas]. From the term *the like,* we must include those skilled in the three Vedas.

Royal establishments.

2. The part to be taken by the king in these matters is laid down by Brháspati:[2] "Assembling Bráhmanas endued with knowledge of the Veda, Çrotriyas [or learned teachers of the scripture,] and priests who keep a perpetual fire for oblations [Agnihotri,] let the king establish them in that place, and assign their subsistence:" "Let him grant to them, in his own dominions, houses and land exempt from taxes, delivering by a written grant, that the royal dues are remitted. *Exempt:* They from whom taxes are not to be taken, are *exempt from taxes. Remitted dues: Remitted,* abandoned: *dues,* the fruits of the earth, and the like; meaning, these [are to be remitted] to them. And the laws for these persons, the Çrotriyas and the rest, are declared by Yájñavalkya:[3] "Duties which are stipulated, are seasonable [for Sámayika may bear either sense,] or prescribed by the king, and which are not inconsistent with their own [regular] duties, should also be diligently observed [by those priests, and enforced by the king.]"

1—Digest 2nd, 287.

2—Digest 2nd, 286-92-3. Ellis's Lectures "Kulika Sabhá from Kulika, heads of tribes or families. A court composed of ancient persons of the same Gotra as the plaintiff and defendant. The Gana, Kula, and Kulika Courts took cognizance, especially, of what is termed technically, Samvida vyatikramam, all transgressions against the discipline and peculiar customs of the tribe or family: they had, also, jurisdiction, probably to a limited extent, in civil causes between the members of the tribe or family: but they had no jurisdiction in criminal cases, and did not, therefore, resemble the domestic courts of the Romans, in which the Pater-familias presided, and punished the faults of his wife and children even with death." See Chap. 1st, Sec. 1st, para. 10th.

3—Digest 2nd, 288.

Associations enumerated and defined.

3. Nárada:[1] "Let the king maintain the associations of the Pákhanda, of the Naigama, of joint companies [Çreni,] of separate trades [Púga,] and of various tribes [Vráta,] and the like, both in a place of difficult access, and in a frequented spot." Associations of persons of different castes for the carrying on of one kind of trade or business between them, are *joint companies.* Among them again, those who are associated by different kinds of work, are called *separate trades. Various tribes,* are associations of near kinsmen, connexions, or gentile relations; the same which are also denominated kula, or family. Of the Pákhanda and Naigama, we have before spoken [para. 1.] Associations of all these, from the Pákhandas to the Vráta inclusive, are all denominated 'companies.'

Punishment for members.

4. The punishment for a departure from the rules laid down among them, is declared by Yájñavalkya:[2] "Him who embezzles the property of the company, and him who violates his engagement, let the king banish from the realm, after confiscating all his effects."

1—Digest 2nd, 293. The words of the text are retained to avoid perplexity. The Mayúkha, and Mitákshará, vary in their acceptation of the term Maigama, for which "trader" seems the most common meaning. See Chap. 17th, para. 2d. For the three last terms, see Chap. 1st, Sec. 1st, para. 10th, and references.

2—Digest 2nd, 297. Reports 2d, 437.

CHAPTER XIII.

SECTION I.

Rescission of Purchase.—(Krítánushaya.)

Rescission of Purchase.

CCVIII.

1. NÁRADA :[1] "He who is dissatisfied with his purchase, after buying a commodity for a [just] price, is called a rescinder of purchase, [which is] a title of judicial procedure."

Term allowed for trial of articles.

2. The limit for examination of an article is fixed by the same author :[2] Milch cattle should be examined within three days; beasts of burden, within five; but the examination of pearls, gems, and coral must be within seven days; of male slaves, within half a month; of females, within one month; of all seeds, within ten days; of iron, and wearing apparel, within one day." Kátyáyana :[3] "Rescission of a sale of land within ten days [is permitted] whether to the buyer or the seller." Bṛháspati :[4] "Within those times, if a blemish be any where discovered in the commodity purchased, it must be returned to the seller, and the purchaser, shall take back the price."

Excepted cases.

3. Kátyáyana :[5] "But an unexamined commodity being bought, and afterwards proved to have a blemish, it must be returned to its owner within the limited time, and not otherwise." If he took the article after personal examination, then, says Nárada :[6] "If a man, having bought for a just price any [cloth or other consumable] commodity [except seed grain,] should suspect that he had made a bad purchase, he may return it on that very day to the seller, unless it be diminished." The buyer who returns it on the second day, shall give [the seller] a thirtieth part of the price; on the third day, twice as much [or a fifteenth]; and, after that, it is absolutely his own." Nárada :[7] "But a mantle, that has been worn, and is tattered and soiled, yet is bought with those known blemishes, cannot be returned to the seller."

1—Digest 2d, 309. See Strange 1st, 301-304, for this and the succeeding section.

2—Digest 2d, 214-15, Reports 1st, 404-5.

3—The same hemistich, and no more is in the Viratrodaya, 134 1st, 1st.

4—Digest 2d, 315-6. The second reading of which, 'sanjayate,' is followed here.

5—Digest 2d, 316. 6—Digest 2d, 309-10. 7—Digest 2d, 317.

SECTION II.

Rescission of Sale.—(Vikríyásampradánam.)

Rescission of sale.

CCIX.

1. Nárada :[1] "When a vendible thing, sold for [a just] price, is not delivered to the purchaser, this is called 'non-delivery of a thing sold,' a title of judicial procedure."

Rules affecting the vendor,

2. Yájñavalkya :[2] "He who, having received the price of a thing sold, delivers not that thing to the buyer, shall be compelled to deliver it together with interest; or, among those who trade to foreign countries, the foreign profit." *Foreign*, of another country. Its *profit*, that is, the profit on a commodity, the produce of a foreign country. The same author :[3] "Should a commodity sold, but not delivered on demand [with tender of payment], be injured by the act of God or of the king, the loss shall fall on the vendor.

and the vendee.

3. But again :[4] "And if a loss arise by the fault of the vendee, on him alone shall it fall." Nárada :[5] "But if a vendee refuse to accept the commodity which he has bought, when it is offered, the vendor commits no offence if he sell it to another."

Sales void.

4. Yájñavalkya says :[6] "That which has been sold by a drunken, or by an insane man; or for a base price; also that which has been sold by one not independent, and by an idiot must be given up and restored by the purchaser." All these rules must be understood, as referring to a contract made by the seller to this effect: 'The price being paid, I will give it to you alone, and to no other,' [as is evident] from the following text of Nárada[7] : "This rule has been declared for vendable commodities, of which the price has been paid [or tendered]; but where it has not been paid [or tendered], there is no injury to the buyer by [delaying the delivery] unless there have been a special agreement [as to the times of delivery and payment]."

Rules for decision.

Punishment of fraud.

5. On the subject of selling a damaged article, Yájñavalkya says :[8] "The dishonest man, who sells the commodity knowing its blemish, [but not disclosing it], shall pay double the price of it [to the vendee], and a fine of equal amount [to the king]."

1—Digest 2d, 317. 2—Digest 2d, 319.20. 3—Digest 2d, 324.

4—Digest 2d, 324. Reports 1st, 404. The last hemistich of one text is here tacked on to the end of the other. 5—Digest 2d, 327. Reports 1st, 404.

6—This is a text of Brihaspati, according to the Viramitrodaya [136—1st, 5th,] and is attributed also to him in the Digest 2d, 328, or at least one very like it. Reports 2d, 118.

7—Digest 2d, 319. 8—Digest 2d, 325, where it is attributed to Brihaspati.

CHAPTER XIV.

Disputes between Master and Herdsmen.—(Svámipála viváda).

Disputes between master and herdsmen.

CCXI.

Punishment for faults.

1. WHEN damage occurs to kine, or other animals, through the fault of their keeper, Yájñavalkya says:[1] "On the loss [of a beast] by the fault of the herdsman, the fine ordained for him is thirteen paṇas and a half; and [he shall pay] the value [of the beast] to its owner." *The value* of the cow, or whatever animal it may be.

Mode of certifying deaths in the herd.

2. The mode of certifying the death of any animal, is thus laid down by Manu:[2] "When cattle die, let him carry to his master their ears, their hides, their tails, the skin below their navels, their tendons, and the liquor exuding from their foreheads: let him also point out their marks." *Marks*, their horns, or other known marks, according to Madana.

Pasture lands of townships.

3. The portion of ground [to be set apart] to serve as pasturage for kine, and the like, is defined by Yájñavalkya:[3] "Let a space be left between village and village, in breadth four hundred cubits; let it be eight hundred cubits round a town, and sixteen hundred round a city." *Space* [Parináha], land appropriated for pasturage of cattle and the like.[4] In the same sense also, a similar word [Parihára] is issued by Manu:[5] "On all sides of a village or small town, let a space [Parihára] be left for pasture, four hundred cubits." Some author has defined a village, as a place where several artificers and husbandmen are found: a town [Kharvata], as a place surrounded with a strong thorn hedge.

1—Digest 2d, 343, and the commentary.

2—Chap. 8th, v. 234. Digest 2d, 347. There is a variation in the reading here, anká, marks, for angá, limbs.

3—Digest 2d, 348.

4—In practice, this is well known, the ground so set apart being termed Kotra in Gújurat.

5—Chap. 8th, v. 237. Digest 2d, 347-8.

4. When the grain or property of another is eaten by cattle, fines must be paid by their owner, according to this ordinance of Yájñavalkya[1]: [The owner of] a female buffalo, doing damage to grain, shall be fined eight máshas;[2] of a cow, half that [amercement]; and of a goat or sheep, half [again] of this amercement." "For cattle eating and lying down in the field, the fine is double the amercement mentioned; it is also the same, if they trespass on preserved lands, and the fine for an ass or a camel, is the same with that for a female buffalo."[3] "As much grain as shall be destroyed, so much produced shall be [paid] to the husbandmen; the herdsmen shall be scourged; but the owner of the cattle incurs the fine already declared." *Preserved lands*, a place for collecting or preserving grass, wood, or the like.

Loss by trespass to be made good by the owner, with a fine for the offence.

CCXII.

5. An exception to this is stated by Uçanas:[4] "Kine are not liable to fine for trespass on jubilees, and they are equally exempt at the season of obsequies." Vyása; "O lion [lord] of kings, he whose property has been snatched away and enjoyed by a Bráhman, or by a very indigent relation, or by a kine, receives greater reward, than he would obtain from the Vájapeya sacrifice." Uçanas[5]: "Neither ancestors, nor deities, taste the offering of that man who demands compensation for corn destroyed by cows."

Exceptions, with the reasons for them.

1—Digest 2d, 361-2.

2—As Res. 5th, 91. Digest 2nd, 358.

3—Digest 2d, 366.

4—Digest 2d, 372, where certain other animals are altogether exempted.

5—Digest 2d, 354.

CHAPTER XV

Boundary Disputes.—[Síma Vivâda.]

Boundary disputes.

CCXIII.

Mode of defining boundaries.

1. BRHASPATI tells the means of knowing boundaries: "The following substances, cow-dung, bone, husks of grain, charcoal, large stones, potsherds, sand, bricks, cows'-hair, cotton,[1] bones, and ashes, having been placed in vessels, shall be deposited under ground at the extremities of the boundary."

Requisite witnesses.

2. Yájñavalkya here shows the nature of the witnesses required: "Men inhabiting a neighbouring village [Sámanta], or that in which the disputed ground is situated, being in number either four, eight, or ten, having put on a chaplet of red flowers, and a red dress, and taking some of the earth [on their heads], shall point out the true boundary." Nárada: "A single man shall not determine a [disputed] boundary, even if he be worthy of confidence; for the weighty nature of this business requires that such fact be settled by many." Brhaspati: In default of the marks for knowing the boundary, even a single man, who is virtuous and upright, and mutually agreed upon by both parties, having put on a chaplet of red flowers, and red clothes, and taking some earth on his head, and having fasted, may point out the boundary."

One witness inadmissable, except under certain circumstances and limitations.

Divination to be attended to.

3. Kátyáyana: "On three occasions, the act of God or the king is to be looked for: in walking over a boundary, undergoing the ordeal of holy water, and likewise in swearing by holy feet; [in the first] within six weeks; [in the second] a fortnight; and [in the third], within seven days."

1—Or cotton seeds, according to the Víramitrodaya [139 2d. 10th,] which has been consulted for the translation of the other terms: a text of the same author is there found; but transposed and read differently "Stones, bones, cows'-hair, husks of grain, ashes, potshərds, cow-dung, bricks, charcoal, gravel, sand."

Punishment of false evidence.

CCXIV.

4. Manu:[1] "Veracious witnesses who gave evidence as the law requires, are absolved from their sins; but such, as give it unjustly, shall each be fined two hundred paṇas." Nárada: "Now if neighbouring villagers have spoken what is not true in deciding a [contested] boundary, they shall be fined, all separately, in the middling amercement, by the king." Kátyáyana: "Where many are assembled [for this purpose], and they do not give an unanimous verdict [or testimony], whether from fear or hope of reward, they shall be made to pay the highest amercement."[2]

Proceedings in default of evidence.

5. Yájñavalkya: "In default of assessors, or of marks for distinguishing it, the king ought of his own accord to define the boundary." Manu:[3] "If the boundary cannot be [otherwise] ascertained, let the king, knowing what is just, [that is without partiality, and] consulting the future benefit of both parties, mark a boundline between their lands: this is a settled law."

Possession, held to be a title to certain conveniences.

6. The same author says:[4] "Reckoning from the time of entry, even as a house-door, a shop [or market], and other places may have been enjoyed by any one, according to that time and manner shall he possess them, and shall not be removed." Kátyáyana also: "An enclosure; a drain; a projection, and small apertures, let them not stop up, or interfere with; let him who stops a permanent water-course or the scite of a house, receive punishment." *An enclosure*, the foundation of a wall. *A drain*, a road for the exit of water. *A projection*, is, according to Madana, 'a place for sitting in, made of wood or other materials, not touching the ground, but built out, from a house or other place.' In some copies they read [dhuma nishkása], 'a passage for smoke, [a chimney]' instead of [bhrama nishkása] 'a drain and a projection.' It then would mean, small apertures, as bull's eyes, or the like, for the purpose of letting out smoke. By the phrase *other places*, we must understand, the walls of other people, and the like.

Prohibition against erection of nuisances.

CCXV.

7. The same author says: "From and after the date of entry [or possession], such things are not at any time to be made, neither shall they make a passage for sight, nor a water-course, into the habitation of another." Bṛhaspati: "Never let a necessary, a fire-place [or heap]; a skin, or dirty water, [or a vessel of it], be at any time

1—Chap. 8th. 257.

2.—In the Víramitrodaya [141 : 2d, 14th] this is elucidated by another hemistich of the same author: "If it be so delivered from want of knowledge, let the boundary be examined afresh; but if there be a contradiction in what they have delivered, they shall be fined in the highest amercement."

3—Chap. 8th, 365.

4—It is not found in Manu's Institutes, and the Víramitrodaya attributes it, by implication, to Bṛhaspati.

placed very near to the house of another." *A necessary*, the place for voiding impurities. *Very near*, in close contact. Kátyáyana: "Places set apart for depositing urine, fæces, and water; a fire-place and a sink [or pit], let them situate, when they make them, at the distance of two cubits from the houses of other people."

Definition of thoroughfare and highway.

8. Bṛhaspati: "That [road], by which men and animals have come and gone unprevented, is called a highway [Sansaranam]: it is not to be shut up by any one whomsoever." Nárada: "Let them not stop up a thoroughfare [or junction of four roads, Chatushpatha] a place dedicated to the gods, or the king's highway, [Rájamárga], by [making there] a place for sweepings, a pit, a drain, a heap, [of rubbish] or the like." Kátyáyana: "That place through which all [sorts of] people are constantly moving, is a thoroughfare [Chatushpatha]: that which has not at any time been stopped up, is called the king's highway."

Fine for committing nuisances in them.

9. Bṛhaspati: "Let one máshika be the fine of him, who there makes either a stoppage [with carts], or a pit [or sink], or a plantation of trees, and likewise of him who wilfully voids ordure there." Manu:[1] "He, who shall drop his ordure on the king's highway, except in case of necessity, shall pay two paṇas, and immediately remove the filth." Kátyáyana: "Let him who defiles a pond, a royal garden, or a holy piece of water, with ordure, be made to remove the defilement, and be punished in the lowest amercement."

Fine for transgressing boundaries, &c. CCXVI.

10. Yájñavalkya: "For altering the divisions [of joint lands], as well as for transgressing the boundary [of others], and taking away a man's land, let the fine be, in order, the lowest, the highest, and the middling, scale."

and for seizure by intimidation.

11. Manu:[2] "He who, by means of intimidation, shall possess himself of a house, a pool, a field, or a garden, shall be fined five hundred paṇas; but only two hundred, if he trespassed through ignorance of the right."

Rights in the produce of boundaries defined.

12. Kátyáyana:[3] "The fruit and flowers of trees produced upon the boundary between two fields, are declared to be joint property, pertaining in common to the masters of the two fields." Kátyáyana:[4] "But where the branches of trees growing in one man's field, be spread out over that of another, then he shall be considered as the owner [of their produce], over whose field they are so situated." Yájñávalkya: "If a man, not even giving notice to the owner, set up a

1—Chap. 9th, 282. 2—Chap. 8th, 264.
3—4—Halhed, 188. Strange's Elem. 1st, 393.

bridge upon [another person's] field, the enjoyment of its profits is the right of the landlord, or, on failure of him, of the king."

Erection of bridges allowed on the ground of another.

13. The same author says: "A bridge[1] which diffuses general benefits [must not be put a stop to] where the inconvenience is slight; and a well, which takes off from the land of another, if the ground [so lost] is small, and the supply of water great." 'Must not be put a stop to,' should here be added. Nárada also: "But a bridge in the middle of another man's field must not be objected to, if the benefit be great, and the damage small, and a profit be expected above the less."

Repair of them gives no title.

Nárada: "If any one, without asking the owner, repair a bridge built long before but fallen into decay,[2] that person in such case shall not enjoy the profits of it."

Punishment for neglecting to cultivate land held under lease.

Vyása: "If any one, having taken a field [in hire] shall neither till it himself nor cause it to be tilled, he shall be made to pay to the owner of the land the vegetable products of that field, and a fine equal to it to the king."[3] *Products*, profits suitable to the powers of the land.

1—Mit. 65. 1st.—Bridges [Setu] are declared by Nárada to be of two kinds: "Bridges of two sorts are known: the one open, and the other confined: "when for the passage of water, it is open; that which is closed, is for the stoppage [of water]."

2—In the Mitákshará, it is read Uttsannam; in the Viramitrodaya, Utpannam; the former of which is followed here.

3—See Wilks's Mysore, vol. 1st, p. 128.

CHAPTER XVI.

SECTION I.

Abuse,—[1]*(Vákpárushyam).*

Abuse defined to be of three degrees. CCXVII.

1. BṚHASPATI : "That is reckoned the first scale in abusive language where, without any thing specific, disgraceful accusation of country, town, or family, is made." "False accusation, of connexion with the sister, or the mother, of another ; [or] of a sin in the minor degree, is called the second degree of wordy abuse, by those skilled in the Çástra." "Accusation of [using] forbidden food, or drink ; the charging with a mortal sin ; and spreading abroad very deep secrets, is termed the highest misuse of language." *Without any thing,* means, 'mere mention made, but without specifying any thing so as to identify the thing [or person] meant.' *Spreading abroad,* divulging.

Punishment of it in various cases.

2. Vishṇu : "For loud abuse of one of the same class, a man is to be fined twelve paṇas." In another Smṛti, it is said :[1] "When a couple of persons stand mutually charged with the offence of abuse, and no difference is observable [in their respective guilt], the punishment [the guardian of good behaviour] of both shall be equal." Nárada :

The aggressor to receive most.

"He who commences an abusive quarrel, shall most certainly be held to be blameable, and also he who in retort is guilty of such improper conduct ; but the man who first began is the principal offender."

Difference of punishment varies as the class of the parties.

3. Manu :[2] "A soldier defaming a priest, shall be fined a hundred paṇas ; a merchant, [thus offending], an hundred and fifty, or two hundred : but [for such an offence] a mechanic or servile man shall be whipped." Bṛhaspati : "The punishment of a Bráhman for giving abuse to a Kshatriya, shall be fifty paṇas ; thus, if

1—Macnaghten, 418.

2—Chap. 8th, 267. Ellis's Lectures. "We had occasion to observe the misapprehension which prevailed with respect to the exemption of Bráhmans from capital punishment. This is one only of the innumerable misconceptions of their situation in Hindu

to a Vaiçya, the half of fifty; if to a Çúdrá, thirteen and a half." with respect to a Çúdra, the same author says: "He who makes known the ordinances of religion, and he who joins in reading the Vedas, or is abusive towards Bráhmans, shall be punished by having his tongue cut out."

CCXVIII.

4. Manu :[1] "He shall be fined a hundred [panas], who defames his mother, his father, his wife, his brother, his father-in-law, or his preceptor; and he who gives not his preceptor the way." *Brother*, his elder brother, because of his companionship with the father, and the rest. According to the Mitákshará, and other authorities, punishment [should follow abuse] against a mother and the rest, even though they deserved it; of a wife, provided she be not in fault.

Punishment for abuse of venerable persons.

5. Yájñavalkya: "Let punishment to the amount of an hundred panas, be inflicted for threatened injury to the arm, neck, eyes, or thigh; and the half of it, for [the like injury to] the foot, nose, ears, the hand, or the like. If this [threat] be uttered by a powerless person, he need only be fined ten panas, but if he have the power to perform his threat, let him be made to give security for the safety of him [threatened."]

Threats of actual injury.

6. The same author says: "Any one abusing another thus, 'I have criminal connexion with thy mother, or thy sister,' let the king oblige to pay a fine of twenty-five panas. The highest punishment [shall be the portion] for him, who abuses a Bráhman learned in the three Vedas, the king, or the gods." Nárada: "A man calling a degraded man fallen; or taxing a thief with being such again, commits no fault: but if falsely, he shall obtain double blame." Yájñavalkya: "He, who contemptuously heaps ridiculous compliments, whether true, or untrue, or ludicrously distorted, upon persons wanting a limb, or diseased in their organs, shall be fined thirteen panas and a half."

Indecent abuse, &c.

CCXIX.

society, which has obtained among foreign nations from the earliest times. Not the least gross of these, is that which ascribes to the whole body a sacerdotal character; and which Sir W. Jones has unaccountably countenanced, by translating, in the Institutes of Manu, the words used to designate an individual of the first caste [Bráhmaṇá and Viprá] "priest," and the feminine of them [Bráhmaná and Viprá] "priestess." The latter mistake is particularly remarkable, as the wives of Bráhmans, though they assist in the private devotions of their family, not only never officiate as priestesses, but have no part in the public ceremonies of religion, except as spectators." It may be further remarked, that the second and third tribes, of Kshatriya and Vaiçya, which he translates Soldier and Merchant, no longer exist in a pure state, and that the Soldiers and Merchants of the present day are, in the eye of their own law, lower than the real Çúdra, being of the Varṇa Çaṇkara, or mixed classes.

1—Chap. 8th, 275, where the reading is 'tanayam, son,' instead of 'çvaçuram 'father-in-law,' as here, and in the Víramitrodaya, and Mitákshará.

7. Uçanas : "He who confesses, 'Such a thing was said by me from ignorance, carelessness, envy, or affection; I will not say so again,' may be fairly considered deserving of only half the fine."

Mitigation in cases of confession.

SECTION II.

Assault.—(Daṇḍa Párushyam.)

1. Nárada : "Injury inflicted upon the limbs of another, with the hand, foot, weapons, or other thing, and defiling him with ashes, or the like, is called actual affray."

Assault, defined.

2. Bṛhaspati : "The man who, having received abuse, retorts abuse; or being beaten, returns the blow; and he who beats one doing him some wrong, does by no means thereby become liable to punishment."

Self-defence permitted.

3. Kátyáyana : "Bhṛgu has ordained, that the highest punishment shall be inflicted for cutting off an ear, a nose, a foot, the eyes, tongue, the penis, or a hand; the middling degree for breaking [or wounding] any of them." Yájñavalkya : "A fine of ten paṇas, is recorded as the punishment, for touching any one with ashes, mud, or dust; double that sum is demanded, for touching him with excrement, or the heel, or spittle: these fines to be doubled, if the fault be committed against those of equal as well as superior caste, or against, the wife of another; if the [sufferers] be of inferior caste, let half the specified fine be levied; but if committed through inadvertence, drunkenness, or the like, it is not punishable." *The heel*, the hinder part of the foot. Kátyáyana : "The fine is declared to be four-fold, when the vomited contents of the stomach, or urine, or fæces, or the like, are thrown on the lower extremities; six-fold if upon the trunk itself; but eight-fold, if upon the head."

Degrees of assault defined.

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4. Yájñavalkya : "For holding up [threateningly a hand or a foot, the punishment shall be [in order] ten, and twenty, paṇas : the middle scale of punishment is declared for all classes, for mutual raising of weapons." The same author says : "The punishment of ten paṇas shall be inflicted, for violent pulling of the foot, the hair, the clothes, of the hand, of another; an hundred, for painfully pulling a man about, tightly binding his clothes about him, and trampling him under foot." The man who causes pain [to another], short of drawing blood, with a stick or the like, shall be fined thirty-

Offences enumerated, with the fines for them.

two paṇas; double that sum, if blood be produced." The meaning of pain, and the rest is, that an hundred paṇas shall be levied for [a complicated assault, both] tying a man in his clothes, violently pulling him about, and trampling him under foot. The same author says: "The middle amercement shall be imposed, for breaking a hand, a foot, or a tooth; for tearing the ears or the nose; for laying open a sore, and likewise for beating one till he seems dead: the limb with which any one gives pain to Bráhmans, if not himself a Bráhman, shall be cut off. The lowest amercement, for raising [that limb, or a weapon] against them, but the half of it, for only touching [weapons] with hurtful intent." Manu:[1] "With whatever member a low-born man shall assault or hurt a superior, even that member of his must be slit, [or cut more or less in proportion to the injury]: this is an ordinance of Manu." "He who raises his hand, or a staff, against another, shall have his hand cut." Kátyáyana: 'Just as the fines are laid down for abusive language between men in the regular or inverse order of the classes, even so shall the fines for violent affray be imposed, according to their order [in rank]."

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Double fine for many assaulting one.

5. Vishṇu: "The fine for every one of many persons beating one, shall, for each, be double of that declared [for a single offender]."

Damages awarded in proportion to the injury.

6. Kátyáyana: In case of injury to the body, or organs, of another at whatever amount they determine the fine, the very same sum shall be given to cause pleasure, and for the cure, [as fixed] by learned men." *To cause pleasure*, to make satisfaction to the sufferer. *The cure*, the price of medicines, and the like. By learned men, is meant: 'That must be paid, which is settled by those skilled in the matter.'

Cruelty to animals punishable.

7. With reference to beating animals, and the like, Yájñavalkya says: "The fine for giving pain to, or drawing blood from, as well as cutting off the branches [as horns, &c.] of inferior animals, shall be from two paṇas, ascending in order: [of the injury]." "For cutting off their organs of generation; and for causing their death, the second amercement shall be paid, and their value also; a double punishment shall be imposed in the case of superior animals, when ill-treated as above described."

As well as damage to trees.

8. In respect of damage to trees, says Manu:[2] "According to the use and value of all great trees, must a fine be set for injuring them; this is an established rule."

1—Chap. 8th, vs. 279-80

2—Chap. 8th, v. 285.

CHAPTER XVII.

Robbery,—[Steyam].

Robbery defined; of three degrees.

CCXXII.

1. NA'RADA specifies three degrees, of things liable to be stolen : "All earthenware utensils ; a stool, a bedstead ; [all articles made of] bone, [or ivory], wood, or leather ; as well as grass, and the like ; legumious grains, and grain ready dressed ; are termed inferior articles." "Cloth made from any material except silk, and likewise all cattle, with the exception of kine ; all metals except gold, and rice of all sorts ; barley and such like [grain], are termed articles of middling estimation." "Gold, precious stones, silken clothes, women, men, kine, elephants, horses, and the property of the gods, the Bráhmans, and the king, are the first rate articles."

Notorious rogues enumerated.

2. The same author here first exhibits [the nature] of an open thief: "Traders [naigama];[1] physicians; gamesters; assessors ; persons taking bribes, [and] cheats ; fortune-tellers [and] professional prostitutes ;[2] persons skilled in the arts ; counterfeits, and those who perform unlawful acts ; arbitrators, [Madhyastha],[3] false witnesses, and likewise those who gain a living by fraudulent practices, are all of them open thieves." In another Smṛti also we find : "Whenever manifest cheats, persons having recourse to false weights and measures ; those taking bribes, or employing fraud ; impostors ; bad women ; as well as counterfeits, and those who live by showing fortunes, are found, all these, and the like, may be known for manifest thieves."

The above terms explained by other texts.

3. Bṛhaspati : "That trader, who shall sell an article, concealing its blemish, mixing it up and making it over again, shall be made to give [an article of] twice its value, and likewise pay a fine equal to the same." "That

1—See Chap. 12th para. 3d. The word is here translated in conformity to the succeeding text of Bṛhaspati, evidently intended by our author to furnish the gloss on it.

2—The word 'Kshudráh' for which the Víramitrodaya reads Bhadraḥ, is translated thus, as in the masculine plural it is unmeaning ; in the subsequent text of Bṛhaspati, as read in the Víramitrodaya, it bears the same sense, supported by the succeeding text, 'bad women.'

3—See Chap. 1st, Sec. 1st.

physician who, being ignorant of medicine or its invocations,[1] or unacquainted with the nature of disease, yet levies money from those who are sick, deserves to be punished even as a thief." "Those who play with false dice; professional prostitutes; those who seize the king's dues; astrologers, as well as cheats, are deserving of punishment as being all denominated swindlers." "Assessors pronouncing an unjust decision; even so also, those who live by bribery; and those who cheat persons trusting them, are every one of them to be banished." "Those who, not understanding their subject, shall pretend to a knowledge of astrology, or shall foretell prodigies, and likewise expound auspicious omens or the like to mankind, must be strictly kept down." "Those men, who exhibit themselves [as religious mendicants] with a staff, deer's skin, and other requisite accompaniments,[2] and by these means deceiving men, kill "them, shall be put to death by the king's people." "Those who, making up a thing of very small value, raise a great price upon it, and they who impose upon other people, deserve to be punished in proportion to the amount." "They who make false gold, precious stones, coral, or the like, shall be made to give back their price to the person who has bought them, and to pay double the amount as a fine to the king." "Persons, acting as arbitrators [Madhyastha], who become corrupt through favour, gain, or other [motive], and those witnesses who depose contrary to the truth, shall be made to pay double [the sum depending] as a fine."

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4. Vyása: "When persons are found walking about at night-time in a secret manner, furnished with implements [of theft] or the like, and whose place of abode is not known, they shall be recognized as secret thieves." The same author adds: "Pick-pockets [or shop-lifters];[3] burglars or house-breakers breaking a hole; highwaymen [Panthamusha] who rob travellers; those who open bundles [Granthí mochaka], and stealers of women, men, kine, horses, and other cattle, are all reckoned but nine different kinds of thieves." *A hole* [Sandhi] in a wall or the like.

Secret thieves.

CCXXIV.

5. Yájñavalkya: "Let shop-lifters, and those who open bundles, be both made to lose the tongs of their hand; for the second offence, they shall be deprived of a hand or foot." *The tongs*, the forefinger and thumb. "The

Punishments enacted for them.

1—Perhaps "consultation, advice," would be a better term. The higher classes, when taking medicine, use very appropriate mantras, or formulas, evincing their reliance on the Deity and their medical advisers' skill.

2—Or, as some copies read, "adorned with jewels and fine clothes."

3—Utkshepaka. The Mitákshará defines it to be, "those who pilfer by throwing up clothes and the like," hooks for the instance. The Viramitrodaya in commenting on the text above, says, "those who, having satisfied themselves of the ignorance of the owner, get the property out of his possession, by snatching it from him."

robbers, who having broken a hole,[1] commit a robbery at night, them shall the king, having cut off both hands, cause to be impaled with a very sharp stake." Bṛhaspati : "In like manner, let him cause highwaymen to be hanged, tied by the neck to a tree. He shall cause the fingers of package-openers to be cut off, for apprehension on the first offence ; on a second [apprehension], both hands or feet ; for the third, they are deserving of vadha." *Fingers*, the forefinger and thumb.

Responsibility of the country, in certain cases.

6. Nárada specifies certain distinctions in the flight of thieves, taking the stolen property with them : "A thief shall by every effort be seized by him in whose district [or premises] he may be furtively concealed. Else, if the trace or footmark[2] be not carried out [of the premises], he shall be made to pay the amount of the loss. If the trace be carried forward from that [district], yet have not fallen elsewhere, then they shall cause the neighbourhood,[3] the road-keepers, or even those entrusted with the care of the district to pay the loss." Yájñavalkya also : "The village shall pay, when within its own limits, or wherever the trace goes ; the five-village community, if beyond one *kroça* ; or again, that of ten villages."

Punishment for kidnapping, and for stealing cattle, &c.

CCXXV.

7. On the subject of kidnapping women, Vyása says : "The woman-stealer shall be burned[4] on an iron bedstead, with a fire of grass ; the man-stealer shall be set up where four roads meet, after having his hands and feet cut off." Bṛhaspati : "Having cut off the nose of a stealer of kine, and bound him, let them plunge him into the water."[5] Nárada : "Vadha shall be inflicted on him, who robs another of his all, or who carries off a married woman, or a virgin." "Bṛhaspati directs that they confiscate all [the wealth] of those who carry off a horse, an elephant, or metals." *All* ; the wealth, must be here supplied. Vyása : "Let them cut off, with a very sharp instrument, half the foot of him who carries off [common] animals." Nárada : "For stealing animals of a superior kind, let his punishment be that of the highest scale, the middle scale for the middle class of animals, and the first [or lowest] scale for such an act in respect of mean animals."

1—Sandhi, a hole made in a wall for felonious entry. Sandhichaura, a burglar, a house-breaker.

2—Padam ; the same which is called "paglá" in Gujurat to this day ; the custom is in the Dakhan equally well known, under the name of Mága.—Reports 2d, 344.

3—Sámantá ; the same word occurred in the same sense, at Chap. 15th, para. 2d.

4—The Víramitrodaya reads, "in the ordeal of hot iron, with the fire in his hand."

5—So the Víramitrodaya, according to which this text was inserted in the errata.

8. Manu:[1] "Corporal punishment [vadha] shall be inflicted on him, who steals more than ten Kumbhas[2] of grain; for less he must be fined eleven times as much, and shall pay to the owner the amount of his property." One *Kumbha* is twenty *Prásthas*, He again says:[3] "For stealing the most precious gems [as diamonds or rubies], the thief deserves capital punishment [vadha]." Nárada: "Capital punishment [vadha] shall be inflicted for stealing more than a hundred of [any of the following things], gold and silver pieces, or the like; fine clothes, and likewise all precious stones." Manu[4]: "For stealing gold and silver, or the like, or costly apparel: or more than fifty palas, it is enacted that a hand shall be amputated: for less, the king shall set a fine eleven times as much as the value."

And for robbery of valuables and grain.

9. Yájñavalkya: "Having set a mark on a Bráhman found guilty of such offence, let him be banished from that his native country." Manu[5]: "[Criminals of] all the classes, having performed an expiation as ordained by law, shall not be marked on the forehead, but be condemned to pay the highest fine." Yájñavalkya also: "Having caused restitution of the stolen property, they shall cause the thieves to be put to death, by different modes of Vadha.

Certain limitations to capital punishment.

10. Nárada: "They who grant food and an asylum [opportunity] to thieves flying before pursuit, and they who wink at their escape, though able to stop them, are also their accomplices in the offence." And therefore, sharers in their punishment.

Aiders and abettors.

1—Chap. 8th, v. 320. Kulluka, whose commentary Sir W. Jones follows, divides vadha into three degrees; Márana, capital; Chhedana, membral, involving loss of limb; and Tárana, corporal. As our law admits not infliction of the second, [though a commutation of it into imprisonment is awarded, where the punishment itself is enjoined by the Hindu Law], vadha must be taken to mean, either Capital, or Corporal punishment, as the case may be. It is used in the latter sense in verse 320, in the former in verse 323. Indeed it is more than hinted, in the commentary on verse 320, that either of the three kinds is to be applied, according to the circumstances of the robbery; for instance, the first, if a Bráhman be the person robbed, &c.

2—See As. Res. 5th, 96-7—Wilson, ad verb.

3—Chapter 8th, 323. 4—Chapter 8th, 321-2. 5—Chapter 9th, v. 240.

CHAPTER XVIII.

Heinous offences,—(Sáhasam.)

1. THEIR nature is declared by Nárada: "Whatever act is by strength performed, by one inflamed with power, [bala] is denominated [Sáhasa] violence, oppression; for strength [Sahas, whence Sáhasa] is also termed power [bala]."

Violent acts

CCXXVII.

2. Bṙhaspati: "Killing a human being, robbery, handling the person of another man's wife, and both species of assault, are the four kinds of violence." *Both species*, that is, abuse and affray.[1] Nárada: "Spoiling fruits, roots, water, and such things, and agricultural implements. or throwing them away, treading them under foot, or the like, is declared to be the first degree of violence [prathama sáhasa]." "[Misusing in the very same way, clothes, animals, food, drink, and household utensils, is denounced as the middle degree of violence [madhyama sahasa]." "Malicious practice with poison, weapons, or the like; the handling of another man's wife, and all other encompassing of life, is called the highest degree of violence [uttama sáhasa]."

defined and enumerated.

3. Yájñavalkya: "The king shall apprehend sacrilegious house-breakers [Bandigráha]; likewise those who steal horses, and elephants, as well as violent murderers, and cause them to be impaled on a stake." Bṙhaspati: "Having carefully ascertained who are notorious murderers, and likewise murderers in secret, and having seized all their effects, they are to be killed by different modes of death."

Capital punishment for certain offenders.

4. The same author says: "When many persons, filled with rage, beat [to death] one single person, then he who strikes him on a vital part, is declared to be the murderer,"[2]

Punishment in case of mobs.

1—Chapter 16th, Sections 1st and 2d.

2—In most of the copies, this text ran in a plural sense, but in some it was singular, and the Pundits were determined on the adoption of that number, by finding it so in the Víramitrodaya.

5. Kátyáyana: "He who commences the quarrel, or takes a part in it, as well as he who points out the road; he who gives an asylum, and he who furnishes weapons, or gives food, to evil doers; so even, he who advised for battle, he who instigated his destruction; one concerned in the work of deceit; he who speaks harm [of the deceased]; who rejoices [with the murderers]; or prevents not the injury, though possessing the power, are all of them actors in the deed: They shall cause a suitable punishment to be awarded, proportioned to the power [of each to suffer]."

Aiders and abettors.

CCXXVII.

6. Nárada lays down distinctions in the punishment of Bráhmaṇas: "From there being no difference [in the degrees of guilt], the same measure of punishment is laid down for all. That of Bráhmaṇas must be short of vadha; a Bráhman is not liable to undergo vadha: his punishment shall be, shaving of the head, banishment from the city, a plain mark upon his forehead, and parading upon an ass. Vadha must not be inflicted on a Bráhman, even if guilty of felony [átatáyí]." For, according to Sumantu:[1] "There is no blame for putting to death persons acting feloniously, excepting kine, and Bráhmans." Kátyáyana: Bhṛgu says, if among felons, there be one of the highest class, and engaged in austerities and reading the Vedas, then, in that case alone, vadha shall not be inflicted. Vadha is for sinners who are of low class.

Exceptions in favor of Bráhmans, in respect to capital punishment.

7. The same author declares who are felons [átatáyinas]:[2] "He who uses a sword, poison, or fire, as well as he who raises his hand in imprecation, and he who kills by magic: and also a spy against the king; he who enjoys a married woman contrary to rule;[3] who is diligent in picking out holes [in another man's coat]: all these persons, and the like of them, are to be known as felons." And Vasishṭha likewise says:[4] "An incendiary, and a poisoner, one who offensively handles weapons, who robs the wealth of another, as well as he who steals his land, or his wife, are all six of them felons."

Felons enumerated.

8. However, the text of Manu:[5] "Let a man without hesitation slay another, [if he cannot otherwise escape], who assails him with intent to murder [átatáyi], whether young or old, or his preceptor, or a Bráhman deeply versed in the scripture:" and this of Kátyáyana: "To him who shall kill a felon coming with intent to take his life, even though he [the felon] have gone through the

Examination of the inviolability of Bráhmans.

CCXXIX.

1—2—Macnaghten, 423.

3—Explained to mean "Rape," in a subsequent text, para. 14th.

4—Macnaghten, 423.

5—Chapter 8th, 350. See General note, "Smṛti," at the end.

Vedas [Vedanta], the sin of the death of a Bráhman does not attach :" [require consideration]. The words *whether* [*va*], and *even* [*api*], relate to the death of all felons with the exception of Bráhmans ; because the introduction of the word Bráhman is for the sake of giving greater force to the law [by an extreme example, Kaimutikanyáya]. So, in the Mitáksharà it is said : " A Bráhman felon is liable to Vadha ; how then [kimutá] shall any other man [escape]." And we find the same, both from this text of Gálava : " He who kills one, the highest Bráhman, feloniously attacking him with a raised weapon, does not render himself a Bráhman's murder ; did he not kill him, he would really be guilty of a Bráhman's murderer"[1] : and this of Bṙhaspati : " He who kills a felon, versed in the Vedas and come of a good family, does not commit heinous murder ; did he not kill him, he would be guilty."

Doctrine of the Smṙti Chandriká stated, and approved.

9. The following interpretation is given in the Smṙti Chandriká : 'That the Bráhman who comes with a felonious intention of putting another to death, alone deserves Vadha ; not the Bráhman who seizes the land or wife, or other [property] of another. But Kshatriyas, or other persons guilty of the abovementioned crimes, are deserving Vadha'.[2] And this is the right [interpretation], because of the necessity for opposing the vague [or general] sense of the aforementioned rules, of Sumantu and Kátyáyana, by the more explicit expression of ' one feloniously attempting the life of another,' suggested by these last quoted texts, of Manu, Kátyáyana, Gálava, and Bṙhaspati.

CCXXX.

Subject continued.

10. However, what Bṙhaspati says : " He who shall refrain from killing a man of superior class, a performer of austere acts of devotion and reader of the Vedas, though liable to Vadha for felonious acts, shall obtain the benefit of one Açvamedha," has reference only to a felon distinct from one seeking the man's own life.

11. And again, the killing of a Bráhman feloniously seeking the life of another, is forbidden in this age of the world [by the text] : " There must be no killing, even in a just quarrel,[3] of a chief Bráhman, though seeking one's life," which prohibition would be evaded, if Vadha were inflicted according to law : and though all the things now forbidden in the Kali, or present age, had previously received the sanction of [our ancient] enactment, yet : " The learned have declared

1—The expression Bhrúnahan, [lit. 'who procures abortion'] is explained in the Víramitrodaya, " as having reference to a very superior Bráhman," [Uttama Bráhmaṇa vishesha.]

2—See note to Chap. 16th, Sec. 1st, para. 3d.

3—Dharma yuddhe ; this seems to be the same term which Sir W. Jones has translated " religious war," in this general note at the end of Manu, Smṙti 2d ; the text appears the same.

these laws abrogated in the Kali age." And in all the commentaries there is a clear line drawn, from the acceptation of the word *laws*. Therefore, in the present age of the world, a Bráhman feloniously seeking the life of another is not liable to Vadha. But for other [offences] a Bráhman felon, is not in any Yuga liable to Vadha; whilst all other felonious criminals, whether Kshatriya or other class, are in all ages of the world liable to Vadha.[1]

Estimation of articles subject to robbery.

12. Bṛhaspati declares the punishment for stealing articles of low, middling, and great value: "So, even he who shall destroy or carry off implements of husbandry or flowers, roots, or fruits, is deserving of punishment, above a hundred paṇas, according to his offence. In like manner, he who shall destroy or steal [inferior] animals, clothes, grain, liquids, as well as household utensils, shall be punished by a fine, not less than two hundred paṇas. If women, men, kine, gold, precious stones, as well as the property of the gods, or of Bráhmans, and that of females; [and similar] costly articles, his fine shall be equal to the value of the stolen property. Or, double its amount [even] may be thought equitable by the king, according to the person; or, the thief may be [even] put to death, with a view, to the prevention of [bad example from] his society." *Female*, a woman's property. The word, *Or*, has the meaning of 'even.' This text belongs to the Chapter on Heinous Offences, according to Madana, [and not to that on Robbery] from the literal meaning of the words '*shall destroy*' and '*thief*,' which come together in this place.

CCXXXI.

Instigators, and their punishment.

13. Yájñavalkya shews the punishment for the original instigator of heinous offences: "He who causes the commission of violence, shall be made to pay a double fine; he also who, by saying, 'I will give [such a reward,'] causes its perpetration, shall be made to pay quadruple its amount." That is, *double* or *quadruple*, in proportion to the fine imposed on the actual perpetrator of it.

Rape.

14. The punishment for him who by force enjoys a virtuous Bráhmaṇí, is thus declared by Manu:[2] "A Bráhman who carnally knows a guarded woman without her free will, must be fined a thousand [paṇas."] If the crime be committed against such a woman, by a man of the Kshatriya, or other class, says Bṛhaspati: "If any one by force enjoy [a woman,] then let the king seize the whole of his property, and having cut off his penis and scrotum, afterwards cause him to be carried round [the town] upon an ass." *Enjoy*, have connexion with the lawful wife of another man. The following punishment for forcible enjoyment of a married

1—Nirṇaya Sindha, Section 3d.
2—Chapter 8th, 378.

woman, whether of lower or higher caste [than himself] or of equal class, by a man of the Kshatriya or other tribe, is denounced by Kátyáyana: "When a man has obtained enjoyment of a woman, by seizure of her person, infliction of Vadha is in that case established, because the act is a transgressing [of the admitted order] of enjoyment."

Restraints on a ravished woman.

CCXXXII.

15. The same author says: "Let the woman who has thus unwillingly been enjoyed, be kept shut up in the house, having her person slovenly, sleeping on the ground, and furnished only with a single ball of food [or with what nature requires."] He adds: "She who has been enjoyed by a man of low caste is to be put away, or suffer Vadha." Here *Vadha* must be understood, only in case of her consenting to the guilty act.

Punishment of the three distinctions of heinous offences.

16. Nárada thus declares the punishment of the lowest, middling, and highest crimes [Sáhasa:] "The punishment of it must be in proportion to the crime, but, in the first [or lowest] degree, not less than one hundred [paṇas.] By those well versed in the law, that of the middle class of crimes, is shewn to be not less than five hundred paṇas. The fine for the highest scale of crime must be nothing short of one thousand [paṇas.] *Vadha,* confiscation of every thing [the criminal is worth,] banishment from the city with branding, and amputation of his limbs, these are the punishments declared for Uttama sáhasa, or the highest degree of crime."

To be inflicted by the prince alone.

17. The command for inflicting Vadha, amputation, and the other punishments named, however, is the province of the prince, and of no other, since to him alone pertains the right to inflict punishment.

CHAPTER XIX.

Commerce with Women,—(Strísaṅgrahaṇam.)

Commerce with women.

CCXXXIII.

Punishment of fraud in such cases.

1. THE punishment for forcible enjoyment of another man's wife, as an act of a heinous nature, has been before declared.[1] Bṛhaspati declares [that for] the fraudulent enjoyment of a woman of similar caste, being the wife of another man: "If a man by fraud enjoy a woman, he shall be punished by full confiscation, and, having been branded with the mark of the pudendum muliebre, let him be afterwards banished from the city." *Full confiscation*, that is, confiscation of his all. And this punishment is meant in regard to women of equal class. If she be of lower, the half of it is proper; but in the case of a woman of superior caste, Vadha is enjoined: and accordingly the same author says: "The half of that punishment, which is to be inflicted for connexion with a woman of equal class, is the due of him who enjoys a woman of lower class. But for connexion with a woman of more exalted caste, let the man be put to death."

Punishment of adultery considered with regard to class.

2. The several punishments of adultery, with women of the three comparative degrees, lower, equal, and higher [than the adulterer], are laid down by the same author: "The punishment for adultery in each of these three orders, must be applied to each in its degree, the lowest punishment [for the lowest rank], the middling, [for the middling], and the highest [for the highest]; for forcible enjoyment in secret, let the middling degree be inflicted."

Criminal conversation,

3. The punishment for a man of bad life, who converses with the wife of another man, is laid down by Manu:[2] "A man, before noted for such an offence, who converses in secret with the wife of another, shall pay the first of the three usual amercements." The punishment for mutual conversation between a man and woman, who have been both forbidden by the father or other relative, is declared by Yájñavalkya: "Let a woman, forbidden so to act, be fined one hundred paṇas, but

1—Chapter 18th, para. 14.

2—Chapter 8th, 554.

let the punishment for the man be double that sum; but where the prohibition has been given to both, then let their punishment be the same as is inflicted for adultery." The first half of this couplet has reference to prohibition communicated to one of the parties only; and the last half, to a communication of it to both.

CCXXXIV.

4. Yájñavalkya declares the punishment for adultery brought about through the mutual desire of both: "[For adultery] between persons of equal caste, let the highest fine be imposed: But the middling scale for the same crime with a woman of lower caste; when the woman's caste is higher, let the man suffer Vadha, and the woman have her ears or other [limbs] cut off."

And adultery in general.

5. Kátyáyana: "And in all offences, whatever sum of money is laid down as the punishment of it in a man, the half of it must a woman pay who is guilty of the same; where Vadha is denounced against a man, let a woman's person be mutilated."

Punishment of women in all cases, is half of that laid down for males.

6. But for connexion with a Bráhmaṇí of loose life, thus says Manu:[1] "But only five hundred [paṇas], if he knew her with her free consent." This relates to a woman of equal caste. On the subject of connexion with women of lower caste, and loose morals, the same author says:[2] "A Bráhmaṇa shall pay five hundred paṇas, if he connect himself criminally with an unguarded woman of the Vaiçya, Rájanya [or Kshatriya], or Çúdra class; and a thousand, [for such a connexion with] a woman of the lowest caste [antyaja]." However this text:[3] "A Bráhman who carnally knows a guarded woman without her free will, must be fined a thousand paṇas," especially intends a virtuous woman. The punishment of a Çúdra for connexion with a woman of higher caste, is declared by Manu:[4] "A Çúdra having an adulterous connexion with a woman of a twice-born class, whether guarded at home or unguarded, [shall thus be punished]: if she was unguarded, he shall lose the part [offending], and his whole substance; if guarded, [and a Bráhmaṇí], everything, even his life." If a Çúdra have criminal connexion with an unguarded Bráhmaṇí, his parts must be cut off, and all his property be confiscated; but, if she be guarded, Vadha is further incurred. It means, that for adultery with a guarded woman, his whole property shall be confiscated, and he be considered deserving of Vadha.

Fornication, considered with reference to class.

CCXXXV.

1—Chapter 8th, 378, of which the first couplet, as relating to guarded women, was quoted. Chap. 18th, para. 14 and is repeated here below.

2—Chapter 8th, 385. 3—Chapter 8th, 378. 4—Chapter 8th, 374.

7. Gautama : " For adultery with the wife of his preceptor, let a man's parts be taken away, and all his property be seized ; if the woman be guarded, let him further suffer Vadha." Manu : " But, if a Vaiçya or Párthiva [man of the royal class, Kshatriya] commit adultery with a Bráhmaṇí whom her husband guards not at home, the king shall only fine the Vaiçya five hundred, and the Kshatriya a thousand." The same author says :[1] " Both of them however, if they commit that offence with a Bráhmaṇí not only guarded [but eminent for good qualities], shall be punished like Çúdras, or be burned in a fire of dry grass or reeds." And again :[2] " If a Vaiçya converse criminally with a guarded woman of the Kshatriya or a Kshatriya with one of the Vaiçya class, they both deserve the same punishment as in the case of an unguarded Bráhmaṇí." Namely, *the same* fine which is denounced against connexion with an unguarded Bráhmaṇí. Vasishṭha : " If a man of the royal class [Rájanya] have criminal connexion with a Bráhmaṇí woman, let him be enclosed with bundles of reeds, and be consumed with fire. Even thus do to a Vaiçya, if he have connexion with a woman of the royal class, and likewise to a Çúdra, if he commit the crime with a woman of the royal, or of the Vaiçya, class."

8. Nárada : " He who has criminal connexion with any one of the following women, a mother's sister, a mother-in-law ; a maternal uncle's wife ; a father's sister ; the respective wives of a paternal uncle, a friend, and a pupil ; a sister, her friend ; a daughter-in-law, a daughter, and the wife of one's preceptor; every woman descended from the same family, any woman dependant on his protection, the king's wife, a female devotee, a nurse, a woman who preserves her conjugal duty inviolate, and any woman of the supreme class, is said to be as guilty as the violator of his religious preceptor's bed. No punishment short of cutting off his parts, is laid down for such a crime as this." Yájñavalkya also : " A man who has connexion with his father's sister, or his mother's sister; with his maternal uncle's wife, and also with his daughter-in-law, with his step-mother, his sister; either with his preceptor's daughter or his preceptor's wife, or with his own daughter, is as the violator of his preceptor's bed ; having cut off his privy parts, let Vadha be his portion ; and the same for the woman, if she were consenting to the act."

Incest defined.

CCXXXVI.

9. This punishment however is not to be inflicted on Bráhmans : For, among the texts of Bṛhaspati, on the liability of Bráhmaṇas, we find : " Let the king impose such a mark as will render his punishment memorable, upon a man when caught in the act of improperly handling another man's wife, and then banish him." If one, not a Bráhman, have criminal intercourse with such women, he is deserving of Vadha, even in the capital degree [Práṇánta]."

Exception in regard to punishment of Bráhmans.

1—Chapter 8th, 376-7. 2—Chapter 8th, 382.

10. Çankha and Likhita say: "With whatever member any particular offence is committed, let that very member be cut off, whoever the offender be, unless a Bráhmaṇa." Yájñavalkya declares the punishment of a Bráhman having connexion with a slave or the like: "The man who has carnal intercourse with slaves kept close, as well as those entertained as mistresses, shall be made to pay, even though their connexion be [in other cases] permitted, a fine amounting to fifty paṇas. *Kept close*, that is, those forbidden by their master to have commerce with other men.

Fornication, in what cases permitted and when punishable.

11. Nárada: "Any woman, not a Bráhmaṇí, who is self-willed, [Svairiṇí,] or a downright prostitute, or a slave, and one without a home, may have connexion with a man of higher caste than herself, but not with one of inferior. But, if such a woman be kept as a mistress, [the person intriguing with her] is blameworthy, equally as if she were another man's wife." *Not a Bráhmaṇí*, whose nature is denoted by the adjective self-willed, which means, 'one, her own mistress, who goes with other men.' *Without a home*, a woman who has left her family, and goes with other men. Yájñavalkya: "If a man have connexion with [a woman of] the lowest caste [antya,] let him be branded with the mark of some disgraceful thing,[1] and banished the country. If a Çúdra [act in such manner,] he shall be similarly marked;[2] but, if a man of vile caste have connexion with a woman of high class, Vadha [shall be his portion."]

CCXXXVII.

Seduction of a man by a woman punishable.

12. The punishment for connexion wilfully effected by a woman, is thus declared by Nárada: "That female who, going to a man's house, excites his desire by handling him, or the like, and so causes him to lie with her, should be punished, as declared by sages, in half that prescribed for a man [guilty of like conduct." para. 4.] Yama defines the punishment for women of the Bráhman and the other classes, who have criminal connexion with a Çúdra, or other [man of lower class:] "If a Bráhmaṇí woman, overpowered by desire, submit herself to the embraces of a Vṛshala, let the king cause her to be devoured with dogs, at the place of the slaughterers. But if a Bráhmaṇí woman submit herself to the embraces, either of a Vaiçya, or of a Kshatriya, her head shall be shaved, and she shall be carried round upon an ass." Vṛshala, a Çúdra. *Slaughterers*, vendors of flesh or fowl; expressing [that she is to be cast out to the dogs] at the slaughter-houses. And this punishment is for continued [or excessive] attachment to such person, according to the Chandriká.

1—Kubandha, or, "of a headless trunk," if Kabandha be the correct reading.

2—The Mit. reads, "antyevasyát," shall become even of that lowest caste, and it has here been altered, perhaps, without cause, as some of the manuscripts had the same.

Proof of adultery defined.

13. Yájñavalkya points out the means of ascertaining the act of adultery:[1] "In cases of criminal conversation, the man may be seized, if engaged in playing with the hair of a woman, the wife of another, or at the moment of discovering love-marks [as bites or scratches,] and likewise upon the confession of both." From the expression, *of both*, it cannot, on the confession of only one of the parties, be pronounced that criminal intercourse has taken place.

Punishment of slander; and of unnatural crimes.

14. Yájñavalkya propounds slander: "He who asserts blemishes against an [unmarried] woman, shall pay an hundred [panas.] But for a false accusation, two hundred; for connexion with a beast, he shall pay an hundred, and even the middle scale of punishment, for connexion with a distressed woman, or a cow." Moreover: "If a man enjoy a woman in an improper part,[2] or a male, and if he perform natural evacuations before [a woman,] he shall be fined the sum of twenty-four panas; and likewise for connexion with a female devotee." Distressed,[3] any one in pain, even the man's own wife. We must understand [also], that he who shall perform his evacuations or the like [dirty act] before the face of a woman [shall be punished].

1—Strange's Elem. 1st, 45. 2nd. 36-7.

2—Ayonau, non in vulva; ut, in ore, aut alio [modo obscœno,"] secund. comm. Mit.

3—The Mit. reads "with a low-caste woman."

CHAPTER XX.

Duties of Man and Wife,—(Strípuṁdharma).

Duties of the husband.

CCXXXIX.

1. NOW, the punishment for a husband who puts away a wife possessed of good qualities, is declared: "The husband who puts away a wife that is obedient, not evil speaking, dexterous [at her duties], virtuous, and maintaining her conjugal vow, must be kept [in his duty to her] by a fine from the king." Yájñavalkya:[1] "He who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part [of his wealth;] or, if poor, to provide a maintenance for that wife."

And of the wife.

2. The same author says, with respect to women: "Let the bidding of their husbands be performed by wives; this is the chief duty of a woman. Even if he be accused of deadly sin, yet let her wait until he be purified from it."

1—Digest 2d, 420. Reports 1st, 63.

CHAPTER XXI.

Gambling,—(Dyúta Samáhvayam.)

Gambling when permitted. CCXL.

1. YÁJÑAVALKYA: "[Payment of] that which has been won publicly, in an assembly of gamesters, in the presence of the master of a gaming-house, and when the king's share has been paid, shall be enforced: but not otherwise." *Publicly*, not in secret. *In an assembly of gamesters*, in a gaming-house. *Master of a gaming-house*, one made, by the king, superintendent of gambling. The interpretation should be thus: 'Whatever has been won [whilst playing] in conformity to these regulations, the prince must cause to be paid, but nothing else.'

Punishment of fraud.

2. The same author specifies the punishment for one guilty of fraud in gambling: "The man convicted of [making or using] false dice, or of [safely undergoing] ordeal, by deceit, shall be banished, after branding, by the king." *Deceit*, fraud. Manu[1] declares the punishment for gambling without permission from the king: "Let the king punish [corporally at discretion,] both the gamester, and the keeper of a gaming-house, whether they play with inanimate, or animate things; and Çúdras who adopt the marks of the twice-born." *The marks of the twice-born*, wearing their string, reading the Vedas, or the like.

Gambling of two kinds.

3. Yájñavalkya thus assimilates the laws of gambling [Dyûtam] and matches [samáhvaya:] "These very rules for gambling [dyúta] must also be applied in live gambling matches." *Live Gambling* [Práṇi dyúte] denoting the nature of the match [Samáhvaye.]

1—Chap. 9th, 224.

CHAPTER XXII.

Sundries (Prakírṇakam.)

Sundries.

CCXLI.

1. YÁJÑAVALKYA: "He who either omits, or adds any thing, in writing the king's edicts, or who allows him that has robbed another of his wife to escape, shall suffer the highest amercement: he who does injury to a twice-born man, by feeding him with things not fit to be tasted, shall receive the punishment of the highest scale of crime; that of the middle scale for [a like injury to] a Kshatriya; the lowest, if to a Vaiçya, and the half [of that again] to one born a Çúdra." *Things not fit to be tasted,* are intoxicating liquors, wine, excrement, or the like. The same author adds: "Let him who deals in adulterated, gold as pure, and him who sells unclean meat, have their body made less [by a limb], and undergo the highest punishment." *Unclean meat* the flesh of cows, or the like. From the use of the particle and, we must understand loss of limb; according to the Mitákshará. Again: "The master of any animal also, whether armed with teeth or horns, who, having the power, still fails to relieve any one in pain from it [when attacked]; shall suffer the punishment of the middle scale of crime; but double, if the sufferer likewise made a noise beforehand." *Making a noise,* that is, crying out. Manu:[1] "For killing a man, a fine equal to that for theft shall be instantly set; half that amount for large brute animals, as for a bull or cow, an elephant, a camel or a horse. For killing very young cattle, the fine shall be two hundred [paṇas]; and fifty, for elegant quadrupeds, or beautiful birds [as antelopes, parrots, and the like]. For an ass, a goat or a sheep, the fine must be five silver máshikas,[2] and one másha for killing a dog, or a boar." This fine must be understood, to be over and above payment of the value of the animal killed.

CCXLII.

Yájñavalkya: "He who charges any roaming gallant as a thief, shall be made to pay fifty paṇas as a punishment; if he sordidly take money from him, and let him go, then eight times its amount is ordained as the fine." *Sordidly take,* receive. "Let the king banish, after cutting out his tongue, that man who utters evil wishes against the king, as well as him who openly abuses him, and him who divulges

1—Chapter 8th, vs 296-97-98 2—As. Res. 5th, 91.

his secret counsels. *Evil wishes*, for his death or the like. *Abuses*, by saying, 'May thy reign not last,' or the like. Manu :[1] "Men who rob the king's treasure, or obstinately oppose his commands, let him destroy by various modes of just punishment; and those who encourage his enemies." Yájñavalkya : "The punishment of him who sells what has touched a dead body, and likewise of him who strikes his preceptor, and of him who seats himself in the king's carriage, or throne, is that of the highest scale of crime." *What has touched a dead body*, funeral clothes, or the like. The same author says : "The punishment of him who puts out both the eyes of another, as well as of him who performs acts hostile to the king, and of him who, being a Çúdra, gains a livelihood by the office of a Bráhman, shall be eight hundred paṇas." The meaning is, 'him who puts out both the eyes of another, him who does an act prohibited by the king, and that Çúdra who lives by the profession of a Bráhman.' But according to the Mitákshará, 'If he assume the Bráhmanical string for the purpose of partaking of food at a Çráddha, he shall have a line, resembling the real string, imprinted on his body with a redhot rod.'

CCXLIII.

The same author propounds the punishment for those who make [decrees] contrary to justice : "An unjust decision must be revised by the king, and he must, as a punishment, impose a fine double [the loser's fee[2] on] the amount litigated, upon the assessors, together with him who gained [in the first instance]." "If a man, though he have justly lost his cause, yet cherish in his mind this idea, 'I am not conquered,' and again come into Court, let him again lose his cause, and be made to pay a double fine."

Standard for valuation of fines.

In every part of this work, where the amount of fine is left unstated, it must be considered as meaning the number of paṇas. This paṇa, again, is the copper one, equal in weight to the Karsha [of 16 Mashas], whence the copper paṇa is denominated kárshiká [of the Karsha standard], in Dictionaries. One Karsha is the fourth part of a pala. And when there are twice ten kauris, their amount, or joint weight, is called one Kákiní, four of which make one paṇa. This is the table of the paṇa standard, according to Bháskara A'chárya.[3]

But with respect to the [punishment enjoined for the] highest scale of crime, and the rest, we find ; "When the fine amounts to a thousand paṇas with eighty more, it then is equal to the highest scale [Uttama Sáhasa] : The half of it is named as the fine for the middling scale, and the half of, that again, is laid down for inferior crimes."

And for application of criminal punishment.

1—Chapter 9th, 275.

2—Chapter 5th. Section 4, para. 8.

3—As, Res. 5th, 96.

General observations on punishment.

Moreover, if in any of the aforementioned crimes, prevention is not attainable, by fines regulated after the above specified scale, even a greater one may be imposed; according as A'pastamba says: "Punishment is said to be for the sake of subduing crime; by it therefore let those bold in crime be brought into subjection." Nárada again points out some exceptions in the punishment of confiscation of a man's all: "Even when confiscation of all a criminal possesses is enjoined, it is not fit that the king should take away his weapons, if a soldier; the beasts of burthen or other [conveyance], of these who subsist by carrying for hire; the ornaments, of professional prostitutes; the musical instruments, of musicians; or those implements by which artizans subsist; in short, any thing by which any person gains his livelihood." Yájñavalkya declares the destination of a fine levied through injustice: "What has been obtained through injustice by the king as a fine, having devoted it to Varuṇa, let him give, with his own hands, increased thirty-fold to Bráhmans." The meaning is 'let him give thirty times as much to Bráhmans, having vowed it to Varuṇa, through their mediation.'

Conclusion.

Here ends the portion, called Vyavahára Mayúkha, of the book Bhagvata Bháskara, written by Nílakantha, own son of Çaṅkara Bhaṭṭa he who had traversed the oceans of the mímáṁsá, the head jewel of Paṇḍitas, son of Bhaṭṭa Náráyaṇa Suri, Jagata Guru, as requested by that ornament of the Saṅgara dynasty, Mahárája A'dhiráj, Çrí Bhágvanta Deva, the intense adorer of the lotos-eyed God, the firmly seated Rájá of the noted city of Bhareha, situated near the resplendent junction of the Charmanvatí and the Tarṇija in the happy Madhya Deça.[1]

1—The last paragraph varies in almost all the copies: some omit it altogether and others take no notice of the place mentioned, which is at the junction of the Chambal and the Jamna; in the printed copy, part of the passage has been inserted at the end and part at the conclusion of the chapter on inheritance, but is here thrown together.

THE DATTAKÁ MÍMÁNSÁ.

TRANSLATED BY J. C. C. SUTHERLAND.

CONTENTS.

THE DATTAKA MI'MA'NSA' AND DATTAKA CHANDRIKA'.

PREFACE TO THE DATTAKA-MÍMÁNSÁ.

THE religious ordinances of the Hindús inculcate the indispensable necessity that a man should be survived by male offspring for performing his exequial rites and other purposes. In consequence, on defect of real legitimate issue, the affiliation, under prescribed rules, of a kinsman or other person is enjoined : and an individual, thus regularly adopted, acquires the filial rights which attach to the real son. This law, peculiar perhaps to the Hindú Code, must often operate harshly towards relatives connected by the nearest ties of kindred : and it is not surprising, that cases of great importance, involving questions as to the legality of an adoption, should, (and they frequently do,) arise.

The admirable translations by Mr. Colebrooke, of the treatise of Jímúta-váhana, and that in the Mitákshará, on the law of inheritance, have laid open to all, that important branch of Indian jurisprudence. But, though the judicious notes, subjoined to that part of the latter treatise, which refers to the succession of adopted sons, afford valuable information on many questions of consequence, relative to adoption; still, the want of an English version of some work of authority, professedly treating, on the subject, and which might exhibit the law of adoption fully and connectedly, has been sensibly felt. It was with a view to supply this deficiency, that the present publication was undertaken under the authoritative sanction of Mr. Colebrooke's advice.

The Dattaka-Mímánsá is the most celebrated work extant on the Hindú law of adoption. Its author, Nanda Pandita, has attained considerable literary pre-eminence—an "excellent and copious"* commentary by him, on the institutes of Vishnu, denominated the Vaijayanti, exists in much esteem, and he likewise was the author of a commentary on the Mitákshará, under the title of Pratitákshara. The Dattaka-Mímánsá, as its name denotes, is an argumentative treatise, or disquisition on the subject of adoption; and though, from the author's extravagant affectation of logic, the work is always tedious, and his arguments often weak and superfluous—and though, the style is frequently obscure, and not unrarely inaccurate,—it is, on the whole, compiled with ability and minute attention to the subject, and seems not unworthy of the celebrity which it has attained. But whether justly or unjustly, the estimation in which it is held, peculiarly suggests its selection for the purposes of the present publication.

* Mr. Colebrooke in his Preface to the Dáya-bhága, &c.

The Dattaka-Chandriká is a more concise treatise, on the same subject, by Devaṇḍa-bhaṭṭa, the author of an eminent compilation of law entitled the Smṛti-Chandriká. It is a work of authority, and supposed to have been the ground-work of Nanda Paṇḍita's disquisition. The doctrines of the two books, vary on some points, and as the work is short, it was deemed advisable to include it in the present publication.

Having said thus much, in explanation of the selection made, the Translator would willingly annex some account of the authors, whose tracts are now presented in an English dress. With very limited opportunity, however, he has failed in ascertaining any particulars, relative to them, further than that they are both writers of Soutnern India. Of the Smṛti-Chandriká of Devaṇḍa-bhaṭṭa, Mr. Colebrooke observes,—"This excellent treatise of judicature, is of great and almost paramount authority, as I am informed, in the countries occupied by the Hindú nations of Dravira, Tailinga and Karnáta; inhabiting the greatest part of the peninsula or Dekhan."—It is not unlikely, that the Dattaka-Chandriká may have attained equal distinction.

The method in which Hindú lawyers, (and indeed Hindú writers in general,) treat every subject, is highly uncongenial to European taste: and in fact, in order to acquire or retain a correct knowledge of the subject, treated on, and the author's peculiar opinions, indistinctly blended, as they often are, with those of others, it is necessary to devote much attentive application,—generally more, than inclination and leisure will admit of being bestowed, by the officers entrusted with the administration of civil justice in India.—The Translator in consequence, in the hope of augmenting the general utility of the work, has compiled, and added a brief Synopsis or summary of the Hindú law of adoption; in which, it has been attempted to exhibit succinctly, every topic practically important. This compilation, of course, possesses no intrinsic authority whatsoever. Of the positions, it contains, many are dubious, and some may prove erroneous. Still however, it is hoped that, it will be found useful, in directing the attention of judicial officers to the various questions, which may arise in case of adoption—questions, which in many instances, would not occur to those, who have not made this branch of law, the object of particular study, and which, the native officers, on whom the duty of exposition devolves, might ignorantly or wilfully leave unnoticed, or erroneously solved.

In regard to the law of inheritance, important distinctions obtain, in the doctrines of the Gaura or Bengal, and other schools of law—and this difference has given rise to controversial writing, and various tracts, professedly treating on that branch of judicature, as received in the different schools respectively.—But the case is not the same, in regard to the law of adoption. Some difference of opinion, may be indeed observed amongst the individual writers on the subject, but it does not appear, that any set of dogmas, has been espoused, or opposed, as the peculiar doctrine of any particular school.—The points, on which any difference of opinion obtains, are noted in the Synopsis; and the translator has in some instances intimated, what appears to him, the more

correct and prevailing doctrine. But compiled, as this work has been, under circumstances, affording little facility for enquiry or collecting information, he has not, from an apprehension of misleading, attempted to debar, or restrict the operation of any particular rule, to the limits of any peculiar tract of country. In fact, such precision is scarcely to be attained. Every contested question or dubious point, which may arise, can only be determined, by reference to the Hindú law officers; who, in delivering their opinions, would be guided by the law, as generally received in the part of India, where the case might arise. Much collision, however, of decision, would be obviated, and the accuracy of undeviating principles attained, if the opinions, of the subordinate Paṇḍits, on any question or point of the nature referred to, were submitted for verification, to the Paṇḍit of the Sadr Díwáni Adálat.

The translation, particularly of the more abstruse treatise of Nanda Paṇḍita, in many places, unavoidably partakes of the obscurity of the original: to render it more intelligible, notes have been occasionally introduced: other notes have likewise been added, in illustration of particular allusions and rites, and rarely to exhibit variations in the reading of the text. It is hoped, that these notes, (they may always be passed by others,) will not prove unacceptable to the curious, and still less to the Sanscrit reader, whose study of the original treatises, particularly in the absence of all commentary, it is presumed, the volume now published, is calculated to facilitate. The addition of the Synopsis has superseded the necessity, which otherwise would have existed, of indicating in notes, on what points the respective treatises may differ, and in what respects they may be supported and contradicted by other authorities.

Five years have nearly elapsed, from the commencement of the translation of the treatises now presented to the public. Its progress has always been retarded, and often totally suspended by official avocations and other causes. This circumstance, no doubt, has been productive of some inaccuracies and omissions, which a continuous application to the work would have obviated. Much labour, however, has been bestowed to render the translation correct, and it is hoped, that on the whole, it will be found a faithful version. The Translator is conscious, that from a publication, such as that now offered, no literary reputation can be derived, but he indulges in the hope, that the humble merit of having devoted to an useful purpose, some hours of occasional leisure, will not be denied; and ample indeed, will he regard the remuneration of his labour, if this meed be bestowed, or should the present work be found in any degree, to facilitate the dispensation of civil justice in India.

MONGEER,
1st *July*, 1819.*

* The manuscript of this work, was sent down from Mongeer, to a friend in Calcutta, who kindly undertook to superintend its progress, through the press in which duty he had much experience: to his death, and the change which the pursuits and profession of the Translator have undergone, is to be ascribed the great delay with which the publication has taken place.

DATTAKA-MÍMÁŃSÁ.

A TREATISE ON ADOPTION,

BY NANDA PAŃDITA.

TRANSLATED BY SUTHERLAND.

SECTION I.

Adoption why, and by whom to be observed—By a Woman when valid—By what precept ordained—What descriptions of Sons to be Adopted in the present age.

Subject proposed.

1. HAVING prostrated himself before Vináyaka,* whose two feet are to be adored by the world, Nanda Paṇḍita argumentatively discusses the subject of affiliation.

Topics mentioned.

2. By whom; how qualified; at what time; for what purpose; from whom; and who may be adopted as a son? That, on which former writers have not deliberatively treated, is fully propounded here.

Atri quoted to shew that the sonless man only is enjoined to adopt—and why.

3. On this subject Atri says, "By a man destitute of a son only, must a substitute for the same, always be adopted: with some one resource, (yasmát tasmát prayatnatas) for the sake of the funeral cake, water, and solemn rites."

Annotations.

3. By a man, &c.] This text is here translated so as to conform with the interpretations subsequently given by the author, this will account for the deviation in some parts from the more obvious sense of the passage.

* Geneça.

4. A man destitute of a son (aputra,) is one, to whom no son, has been born, or whose son has died: for a text of Çankha expresses. "One to whom no son has been born or whose son has died, having fasted for a son, &c.:" Another reading recites, "The impotent man or also one whose offspring has died."

Term "Aputra" of Atri explained.

Çankha.

5. "By a man destitute of a son, &c." Since it is shewn by this, that the being so destitute, is a cause; in omitting to adopt a son, an offence even is incurred; for the precept enjoining the production of a son being positive, it results that the contravention of it, is the cause of an offence; and on defect of any son in general, exclusion from heaven is declared in this text; "Heaven awaits not one destitute of a son, &c."* And further in the following passage, also, a son in general, is shewn to be the cause of redemption from debt. "A Bráhmaṇa immediately on being born, is produced a debtor in three obligations: to the holy saints, for the practice of religious duties: to the gods, for the performance of sacrifice: to his forefathers, for offspring. Or he is absolved from debt, who has a son: has performed sacrifices: and practises religious duties."

Omission of the sonless man, to adopt argued to be an offence and authorities in support cited

6. "By a man destitute of a son only." The incompetency of one having male issue is signified by the term "only" in this passage.

The expression 'only' in the text of Atri meant to exclude adoption by one having a son.

7. By this the word 'distress' (ápat) used by Manu in the following text is explained. "Whom the father or mother during distress, may give as a son, confirming the gift with water, &c."† And it is explained in the same manner by Aparárka "during distress that is the adopter having no son."‡

This elucidatory ot the word "distress" in a text of Manu.

So explained by Aparárka.

8. Or it may be interpreted 'during distress' during a famine and so forth: as in the Mitákshará.|| "By specifying distress it is intimated that the son snould not be given, unless there be distress: this prohibition regards the giver." Accordingly Kátyáyana. "During a season of distress the gift or even sale [of a son] may be made: otherwise the same must not be done: this is the injunction of the holy institutes."

Another interpretation as in the Mitákshará noticed.

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* Both passages here cited are from the Vedas.

† Manu 9. 168, cited also at length in the Mitákshará on inheritance, v. Colebrooke's translation, Ch. 1, Sect. XI, § 9, and notes where this and other explanations are noticed.

‡ Aparárka the author of a commentary on Manu.

|| On inheritance, vide trans. Ch. I, Sect. XI, § 10 and notes.

9. Manu also "A son of any description must be anxiously adopted by one who has none: for the sake of the funeral cake, water, and solemn rites; and for the celebrity of his name." He who has no son may appoint his daughter in this manner to raise up a son for him, &c., &c."

Text of Manu on the subject of adoption cited.

10. As for the instance, appearing, of the adoption as sons of Dévaráta and the rest by Viçvámitra, and others, although possessing male issue: that from its repugnancy to the revealed law, as contained in passages before quoted (v. § 5,) must be understood, (in the same manner as the eating the haunch of a dog, and so forth,) not to imply the existence of a revelation [authorizing the act.*]

The indication in scripture of sons being adopted by persons possessed of male issue, is not conclusive of a revelation to that effect.

11. It is not to be argued, that a revelation recorded, from recollection, does not supersede the indication of a [different] revelation: for it is of greater authority being supported by direct passages of revealed law, such as: "Heaven awaits not one destitute of male issue;" and so forth.

Objection, that the indication of a revelation supersedes that recorded from memory, anticipated and refuted.

Annotations.

9. Manu also.] Two texts are here quoted. The first though also cited in the Dattaka-Chandriká and other works, as from Manu, is not found in the institutes of that author. It may however be from Vrhat-Manu, a work frequently quoted in law treatises, but which if extant is very rare. The latter text is from the institutes: Its sequel is thus. "[Saying.] The male child who shall be born from her in wedlock shall be mine for the purpose of her forming my obsequies." Manu 9, 127.

10. The adoption as sons of Dévaráta and the rest, &c., &c.] On this subject the following passage from the Vishnu Puráṇa occurs. "The son of Viçvámitra was Çuna-sepha, a descendant of Bhrgu given by the gods: subsequently he was called Dévaráta. And afterwards persons called Madhu-chchhanda, Jaya-krit, Deváshtaka, Kachchhapa and Haritaka were the [adopted] sons of Viçvámitra." Viçvámitra was born in the Kshatriya or military class and by excessive devotion raised himself to sacerdotal rank. The passage quoted has reference to that period of his life when he had become a Bráhmaṇa.

The eating the haunch of a dog.] It is recorded of Viçvámitra that when perishing with hunger he ate the haunch of a dog. (v. Manu 10, 108.) It is not however to be inferred from this that there exists a revelation authorizing the act.

11. It is not to be argued.] The author anticipates that an adversary may allege that the instance recorded in scripture of Viçvámitra and others adopting another son though possessed of male issue, indicates the prior existence of a revelation authorizing the act: and that a revelation so indicated is more cogent than the rules of revealed law recorded from memory by Atri and Manu in § 3 and 9. This objection he refutes.

* It may be here observed once for all that words or sentences included within these marks or brackets [ ] are not expressed in the original, but inserted by the translator to complete the sense of the text or render it more clear.

12. But, however if you pertinaciously insist on the superior cogency even of the indication of a revelation, to a revelation recorded from memory: then we accede that a man though possessed of male issue, may adopt another son with the sanction of such issue: on account of the revelation indicated in the following passage: "By that which our father recognized we abide. We place you before us, you, we follow, &c." Neither should it be urged, that this regards the making an elder son, not the adoption of a son; for the one would be invalid if the other, may not be done. It is useless to enlarge.

But even if admitted, the father having issue, must have the assent of the same to adopt another son.

A revelation to this effect indicated, and

Objection refuted.

13. "By a man destitute of a son." The word son here used is inclusive also of the son's son and grandson, for [through these] the exclusion from heaven, denounced in such passages as "Heaven awaits not one destitute of a son" is removed: since it is declared in the text subjoined, that the mansions of the happy are attained through the grandson and the other. "By a son, a man conquers worlds: by a son's son, he enjoys immortality: and afterwards by the son of a grandson, he reaches the solar abode."*

The word "son" includes the son and grandson of a son as appears from

A text of Manu.

14. Nor can it be alleged that the adoption of a son [though a grandson and his son exist,] is for the sake of the funeral obsequies; for from this text it appears, the other two also are competent to perform such rites. "The son of a son and the son of a grandson like these the offspring of a brother, &c., &c."†

They as well as the son may perform obsequies.

15. 'By a man destitute of a son.'] From the masculine gender being here used, it follows that a woman is incompetent [to adopt.] Accordingly Vasishtha ordains; Let not a woman either give, or receive a son in adoption: unless with the assent of her husband."‡

A woman has no authority of herself to adopt as appears from a text of Vasishtha.

Annotations.

12. Neither should it be urged that this regards.] The passage quoted is apparently from the Vedas: but the translator not having succeeded in discovering it, is unable to estimate exactly the scope or merit of the arguments used. It is difficult to suppose that the author means to assert the analogy between investing a younger son with seniority and the affiliation of a stranger. To reconcile this part satisfactorily, it appears necessary to assume, that the passage cited, regards the case where a father creates as an elder son in preference to his other real sons, one previously adopted.

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* Manu 9, 137.

† From the Vishṇu Purâṇa v. infra Sect. II, § 60, where this text is completed.

‡ Vasishtha 15, 4.

It follows a widow cannot adopt;

16. From this, the incompetency of the widow is deduced since the assent of her husband is impossible.

Nor can it be said her independency confers such right.

She is even dependent on kinsmen.

17. Nor should it be argued, that the assent of the husband is requisite for a woman whose husband is living: because she is subject to control: but not so the widow, for mention being made of woman in general, dependency on control is not the cause: and [were it,] her subjection to the control of kinsmen exists as shewn in the following text: "On default of these the kinsmen, &c."

But may not adopt with their assent.

18. If it is contended, then, that she may adopt a son, with the assent of the kinsmen even; it is wrong: for the term "Husband" would become indefinite: and the purpose would not be attained. Now the purpose of the husband's sanction, is that the filiation, as son of the husband, may be complete, even by means of an adoption, made by the wife.

Satyáshádha confirms.

19. Accordingly, [as appears,] from this aphorism, ("lastly of the mother, first of the father, &c.") the connection of the son affiliated, through the wife to both, is declared in the following compendious rule of Satyáshádha: "Of the son by marriage: the Kshatriya or wife's son: the son made: the son of an appointed daughter: the son affiliated through the wife: the son of a marriage according to the A'sura form: the son of a female given as a gratuity, [the relation of lineage] to both parents [obtains.]" Now the connection of lineage to the father, is the filiation as his son; and such filiation proceeds from the sanction only of the father; not from the act of adoption: for the agent of that, in this instance, is the wife.

Explanation of his technical terms by Savarasvámí cited.

20. "'The son by marriage,' is the son received with a pregnant bride (Sahódha.) 'The son affiliated through the wife,' is the son demanded by the wife (Strí-yáchíta) or the son obtained through the wife (Strí-sattáka.) 'The son by a female given as a gratuity,' is one born on a damsel obtained, as a fee at a sacrifice. The rest are obvious. Thus expounds Savarasvámí."

Annotations.

17. As shewn in the following text.] The text alluded to is the following of Yájñavalkya: "The father protects her when a damsel: The husband when married: sons in old age: on default of those kinsmen, a female attains not independence."

19. Accordingly as appears from this aphorism.] In the passage from Satyáshádha the term 'pitroh' occurs. This may either signify 'to both fathers,' viz., the adoptive and natural fathers or as translated "to both parents" the father and mother. To clear the ambiguity and confirm the latter construction, which the author adopts, he adduces the other aphorism; "Lastly of the mother, &c."

From one of which the necessity of the prior sanction of the husband is inferrible.

21. And in the case in question, the wife being mentioned as the instrumental means, a primary author of the act, is obtained; for otherwise, one accepted in adoption by the wife, being son to such his mother [only], since his connection, as lineage to her husband, would be wanting, his incompetency to perform the funeral rites of the husband would result; and no father existing, at his marriage, and so forth, the paternal family and other particulars must of consequence remain unspecified.

The filiation however of one adopted, by the husband as son of the wife is complete without the sanction of the wife.

22. If the case is thus, then the assent of the wife is requisite for the husband also; for the purpose [of such sanction] would be the same; [as that of the husband to the adoption by the wife].—This (if alleged) is wrong; for in consequence of the superiority of the husband, by his mere act of adoption, the filiation of the adopted, as son of the wife, is complete in the same manner as her property, in any other thing accepted by the husband.

Váchaspati declares the inability of women to adopt from incapacity to perform the requisite sacrament.

23. Moreover Váchaspati, "" Having offered a burnt offering (Hutvá) with recitation of the holy words, he should take an unremote kinsman, &c." In this text, the indeclinable past participle 'Hutvá,' (Having offered, &c.), indicating the government of both verbs, by the same agent, being used: the adoption by one only, who may offer a burnt offering, (Homa) is valid: therefore women, from their disqualification to perform such sacrament, are incapable to adopt."

Or, if for this a substitute be admissible, they cannot perform the prayers.

24. It must not be argued, that, since under a text of Çaunaka the employment of a priest is according to the approved doctrine, the "Homa" may be completed by his intervention: for although that were completed, still would the adoption [by the woman] be imperfect, since she is not competent to perform the prayers requisite for the same.

Which Çaunaka has specified.

25. These Çaunaka has specified: "And taking him by both hands, with recitation of the prayer commencing ("Devasyatva, &c.:") having inaudibly repeated the mystical invocation, "Angád-angat, &c." having kissed the forehead of the child* &c."

Annotations.

21. And in the case in question.] That of the son adopted through the wife.

24. Under a text of Çaunaka] The part of Çaunaka here alluded to, is subsequently cited, v. §.

25. "Angád-angat, &c."] These are the initial words of a passage from the Vedas subsequently cited at length. "From my several limbs, &c." (v. Sect. 7, § 7.)

* V. infra. Sect. 5, § 15.

Çúdras however may adopt under an express passage which refutes Váchespati, who denies their power as incapable of the sacrament and prayers.

26. Nor does thus the want of power of Çúdras follow: for, their ability [to adopt], is obtained from an indication [of Law], conclusive to that effect, in this passage: "Of Çúdras from amongst those of the Çúdra class."* By this Váchespati is refuted, who says: "Çúdras are incompetent to affiliate a son, from their incapacity to perform the sacrament of the Homa, and prayers prescribed for adoption."

But the inability applies to widows only, and not to women whose husbands live; in whose case the observance of particular solemnities, may be dispensed with.

27. Since the [only] power of widows is fixed to be that of using property during their lives, it is established that they have not power to adopt a son. But it must not be affirmed, that it follows that in the same manner women also, whose husbands are living, are incompetent: on account of their incapacity to perform the burnt sacrifice, prayers, and so forth. For, by the reservation "unless with the assent of her husband" ability to perform what is principal [viz., adoption], being established, from their consequent power to perform what is subordinate [viz., those solemnities], the burnt sacrament, prayers, and so forth, might be inferred. Therefore, since by this passage ("of women and Çúdras without prayers") a dispensation with respect to prayers, is established, the adoption [of the women in question,] would be valid without prayers; like their acceptance of any chattel.

A text cited.

The doctrine of the author further supported.

28. Besides, this part of the text, "unless with the assent of her husband," is an exceptive exemption from the general prohibition, contained in the part preceding; "Let not a woman either give, or accept a son;" and in it, the assent of the husband is the cause. Therefore, the widow is incompetent [to adopt]; for, her husband being dead, since his assent is impossible, the exemption destitute of the cause [to give it effect], is without validity; and other means of deducing [her authority,] are wanting. Thus the doctrine of every writer is rendered even consistent.

Adversary's argument refuted.

29. Nor must it be argued, that this being the case, [that is, if the widow may not adopt] her exclusion from heaven would not be obviated. For that, in the following text, is declared by Manu to be removed by devotion to pious austerity. "Like those abstemious men, a virtuous wife

Annotation.

27. A dispensation with respect to prayers.] Prayers here must be considered, as used for the whole of the solemnities.

* Çaunaka subsequently cited at large, v. Sect. 2, § 74.

ascends to heaven, though she have no child; if after the decease of her lord, she devote herself to pious austerity."* Thus the whole is unexceptionable.

One son may not be adopted, by mere than one father.

30. "By a man destitute of a son." From the singular number being here used, it follows; that, the same son must not be adopted, by two or three persons.

Opponent's objection mentioned.

31. But would not thus, the law as to the son given, and the rest, being 'Dvyámushyáyaṇas,' (or sons of two fathers) be contradicted? Accordingly, there is this passage of law, in the Prayogapárijáta. "Sons given, purçhased, and the rest, are sons of two fathers. Their marriage may not take place in either family; as was the case of Çringa and Çaisira."

And refuted.

32. It is not so: for, the state as son of two fathers, imports both a natural and an adoptive father; and the prohibition regards two adoptive fathers. Thus there is no contradiction.

The substitute for a son, is eleven-fold as shewn by Manu.

33. The substitute is of eleven descriptions: the son of the wife, and the rest, according to a text of Manu which recites, "Sages declare these eleven sons, (the son of the wife and the rest,) as specified, to be substitutes for the real legitimate son; for, the obsequies would fail (Kriyálopát)."†

Of these, some are substitutes by inherent right, others from the authority of a text of Law.

34. Of these, those are substitutes by right even, who are related, by containing portions of either, of the husband, and wife; and the text, [of Manu] intends a restriction [as to the substitutes not so circumstanced]. Again, those who bear not such connection, are substitutes in virtue of passages of Law.

Annotations.

31. As was the case of Çringa and Çaisira.] The translator has failed in discovering the particulars of the case here referred to.

33. The substitute is of eleven descriptions.] The following is the specification of these succedaneous sons, in their order enumerated, by Manu—The 'Kshatriya' or son of the wife by a kinsman. The 'Dattrima' or son given. The 'Kritrima' or son made —The 'Gudhotpanna' or son of hidden origin—The 'Apaviddha' or son deserted—The Kánína' or damsel's son—The 'Sáhódha' or son received with a pregnant bride—The 'Krita' or son bought—The 'Paunarbhava' or son of a woman twice-married—The 'Swayandatta' or son self-given,—and the 'Çaudra' or son by a 'Çúdrá' woman.—These technical terms are explained fully in Sir Wm. Jones' translation of Manu, Chap. 9, verses 158 to 179—But more extensive information will be found in Chap. 1, Sect. XI of Mr. Colebrooke's translation of the Mitákshará, and the copious and very valuable notes subjoined.

* Manu 5, 160. † Manu 9, 180.

35. For instance: the son of the wife, the son of an appointed daughter, the daughter appointed to be a son, the son of an unmarried daughter (Kánína), the son of a twice married woman, the son received with a pregnant bride, the son of hidden origin, are principal substitutes, as partaking partially of portions [of the pair] from their kindred, in some instances, to their mother only, and in others in a small degree, to both parents. The son given, the son bought, the son made, the son self-given (Dattátma), and the son rejected, are substitutes in virtue of express texts of Law. Now, the term 'substitute' is applicable to both classes even, by reason of its frequent use [in such general sense]; in the same manner as in the passage, "He places Bricks (Srishṭi)" the term 'Srishṭi' [intends bricks generally].

The first class enumerated.

The second also.

36. It has been said by Medhátithi.—"These cannot be substitutes: a substitute is supplied on defect of the means of completion of an act commenced.—Now a son is no such means, for, he is the primary object of the act, of the production of offspring: Hence the term Putra (son,) applying even to the son of the wife, and other adoptive sons, the designating these substitutes, is for the sake of shewing respect to the son of the body (Aurasa); for, the expression 'substitute' as current, denotes a lesser degree of benefit. To the same extent, as the real son can confer much benefit, the others are unable."

Medhátithi cited, who denies that adopted sons can be substitutes.

Though so called, as being succedaneous sons.

37. This must be canvassed; for, the position to be proved, being this, that the sons given and the rest are not substitutes; the cause assigned, viz., the not being the means of completing the act, of the production of a son, does not apply to the persons affected by the point to be proved: since those, as they already exist, are not liable to be produced.

Doctrine of Medhátithi canvassed.

Annotations.

35. In the same manner as, &c.] Allusion is here made, to an elaborate, and obscure disquisition on the passage from the Vedas quoted, which forms the 17th topic, 4th chapter, 1st Book of the Mímánsá. It is there proposed, as the subject for discussion, whether the passage in question, contains a precept in itself; or is merely confirmatory of a precept conveyed, in some other passage. The latter position is demonstrated, to be the correct one: and it is shewn, in the course of the argument, that 'Srishṭi' occurring in the passage, does not mean particular bricks, at the laying of which, for an altar and so forth, 'Mantras' in which that term occurs, are read; but bricks in the general, since the term is frequently used in such general sense.

36. A substitute is supplied.] The reader is referred to a subsequent note to § 47.

Means of completion.] The Sanscrit term so rendered is Anga. In the language of Logic, it signifies the materials, or means of completing any work.

37. This must be canvassed.] Nanda Pandita assumes the argument of Medhátithi to be this—A substitute is supplied on defect of the means of completing an act commenced:—adopted sons are not substitutes, because a son (real or adopted) being the

38. Again, in the precept, enjoining the production of a son, the son, being the object to be produced, is no means of completion. But this is the case in respect to, that precept only, not any other precept.—For, from passages of scripture such as, ("or he is absolved from debt who has issue, &c." v. § 5) this precept resulting, 'Let him procure absolution from debt through a son,' it is established, that the son, as being the instrumental cause of such absolution, is a means of completion: and the instrumentality of the son, is even expressly declared by Manu, in this and other passages, "By a son, a man conquers worlds, &c." (v. § 13.)

And further controverted.

39. If this be the case: then there may be for the sake of attaining immortality, and the solar abode, a substitute for a grandson, and great-grandson—Be it so: we are in no-wise affected.

An objection disregarded as immaterial.

40. Nor does an identity of precept follow, from both, [viz., the precept enjoining the production of a son, and that directing the attainment of redemption from debt, through a son] having a common result. for, in the same precept, the two instrumental causes, (connubial intercourse at due season, and a son,) and their several effects (a son and redemption from debt,) cannot be included: and were they, three contradictory things would become two.

Argument of opponent anticipated and refuted.

Annotations.

object of the act proposed (viz., the production of a son,) is no completive means (either primary or as a substitute).—Accordingly (if this be the meaning of Medhátithi), he correctly states that the reason assigned, does not apply to the adopted sons, or persons affected by the point to be proved: as these already existing, are not liable to be produced.—Medhátithi subjoins "Hence the term Putra (son) applying even to the son of the wife and other adoptive sons, &c."—This passage gives colour to the construction, assumed by Nanda, of the argument of the author mentioned: yet, the following syllogism exhibits a preferable, if not, the more obvious sense of the argument in question.—A substitute is supplied for the deficient means of an act commenced.—the son (legitimate), being the object of the act proposed (viz., the producing a son), is no such means—Therefore, sons given and the rest cannot be substitutes for the real legitimate son. Nanda however, rests his refutation of the doctrine of Medhátithi, by shewing in the following section, that a son, though not the means of completing the production of a son, is however, the means of accomplishing another act, and consequently there may be logically a substitute for a son, as such means.

The persons affected by the point to be proved.] The single Sanscrit term 'Paksha' is rendered by this circumlocution. In the language of logic it signifies, the party or object whose quality and so forth, would be affected by the position to be proved.

40. Nor does an identity of precept follow.] The author here anticipates an argument of an opponent. If the two precepts, from implying the same result (viz., the acquisition of a son), are identical; the argument of our author in § 38, would not hold.

Three contradictory things would become two.] That is, if the two causes, and their two effects, specified in the text, be included in the same precept, they would be blended into one cause, and one effect: and in this manner, three contradictory things, (viz., connubial intercourse at due season, a son and redemption from debt,) would become two.—The two causes and their two effects are enumerated only as three; because the son is mentioned, as the effect of one cause, and the cause of the other effect.

41. Consequently, the son being the instrumental cause, in an act, the object to result from which, is absolution from debt: on his failure the son given, and the rest may without repugnancy, be substitutes: in the same manner, as [at a sacrifice] where the 'Soma' plant is wanting, the 'putika' is a substitute.

Correct conclusion deduced.

42. This even is made obvious, by Manu [who says.] "For, the obsequies would fail" (v. § 33.) Because the failure of these would ensue; if on default of a legitimate son, the affiliation of a substitute might not take place. Obsequies, are funeral rites, consisting in presenting oblations of food and water, and so forth. In the same manner by Atri also [it is said]; "For the sake of the funeral cake, water and solemn rites" (v. § 3.) Thus the whole is unimpeachable.

Supported by a passage from Manu.

And Atri.

43. "There is no substitute for mastership, a wife, a son, a country, time, fire, the divinity, an act and word, &c.," as for also the exclusion of the substitute for a son, by this text of Satyáshádha; that [is propounded by the author], after having authorized to one, having no son, a substitute for the same (in such passages as that subjoined,) for the sake of obviating, the recital of the benediction [therein alluded to]. "He recited, for offspring, that benedictory prayer called "Jyotishmati." Accordingly, there is this passage of revealed Law. "He, to whom no son may have been born, should recite for offspring, the prayer commencing 'Jyotishmati.'"

Prohibition by Satyáshádha of the substitute for a son, noticed and reconciled, as being particular: not general.

44. So in the Sáman Veda, in the part treating on father and son, after having by such passages as "The father of such a one sacrifices, &c.," authorized, to one destitute of a son, the substitute for the same: [the subsequent prohibition] is meant to avoid, such particular passages; but not intended to exclude, in every case even, a substitute for a son; for, that would contradict the following and other passages of recorded Law: "A substitute for a son must be adopted." (§ 3.) "To be substitutes for the real legitimate son." (§ 33.)

This opinion of the author, confirmed by a parallel instance in the Sáman Veda.

Annotations.

41. Where the Soma plant is wanting, &c.] This is in allusion to the following rule in the Vedas.—"Should he be unable to procure the Soma, let him cut the putika." This rule forms the subject of an elaborate disquisition in the 13th topic, 3rd section of the 6th Book of the Mímánsá of Jaimini.

43. That [is propounded by the author], after having authorized, &c.] Nanda Pandita assumes that the prohibition, of a substitute for a son, by Satyáshádha, here noticed, is only with reference to the particular passage recited, by which, that author had previously authorized, such substitute for the particular purpose therein contemplated.

For the sake of obviating, &c.] A different reading of this passage in the original is found: 'áviraçansana' instead of 'áçiráçansana'—If the latter be correct, (which it does not appear to be,) the translation should be, 'for the sake of obviating the appellation of childless.'

45. It is next deliberated, whether this substitute for a son, who is ordained, is so, in virtue of, the precept enjoining the production of a son, or that regarding the funeral obsequies. For, allusion has been made, as to both; for instance, with respect to the precept to produce a son, by the first part of Atri's text. "By a man destitute of a son only, a substitute for the same, must always be adopted,"—and with respect to the precept regarding funeral obsequies, by the concluding part of the same text: "For the sake of the funeral cake, water and solemn rites."

Discussion proposed as to the precept in virtue of which the substitute for a son is ordained.

46. Of these positions, the first is not correct: for, there can be no substitute in virtue of the precept to produce a son; as the son, by reason of being the object to be produced, is no means of completion.

Not by that, directing the production of a son.

47. Neither is the second accurate; for, a contradiction would be involved. The substitute for a son is ordained for one having no male issue: but not funeral obsequies performed by such person: and exequial rites, the agent of which is a son, [are ordained]; but there is no precept executed by a son, directing a substitute on his (the son's) account. Nor is there a substitute for an agent.

Nor that regarding the funeral obsequies.

48. Or it also may be affirmed that the substitute is supplied, with respect to being an agent, in the performance of the act, but not in respect to enjoying the fruit; in the same manner as in the case of the death of either of the seventeen priests engaged in a sacrifice

An adversary's mode of reconciling the difficulty anticipated.

Annotations.

47. A contradiction would be involved, &c.] The translator is far from confident, that, he can satisfactorily illustrate this very obscure part, of which different readings occur. To render it however, at all intelligible, the following maxims of Hindû Logic, must be premised. —'There can be no substitute for the agent, or object of an act: but only for its materials or means of completion: should these, or any of them be wanting, a substitute for the same, can be constituted by the agent only.'—Now, if it is asserted, that, the substitute for a son, is ordained in virtue of a precept directing the performance of obsequies, it must be affirmed, that, the person, for whose sake, the substitute is supplied, and the performer of the obsequies, are the same—For, the person, for whose sake, the substitute is supplied, is the individual, who constitutes the substitute. Now, as an agent only, can constitute a substitute for the means of completing his own act; it follows, that the individual in question, would be the agent of the obsequies. But these are admitted, to be distinct persons: and thus a contradiction would be involved. Accordingly, the author with reason says,—"The substitute for a son, &c. Moreover, a son, being the agent of the act, enjoined in a precept, directing the performance of obsequies, the author further refutes the doctrine, that a son is ordained, in virtue of that precept, by adding, in allusion to the maxim above specified, "Nor is there a substitute for an agent."

48. Or it also may be affirmed that] The author anticipates, that it might be alleged in support of the position, which he controverts, that a substitute might be supplied, in virtue of the precept proposed, merely as the performer, of the act required: as in the case alluded to in the text.

(Satra), a substitute is supplied, with respect to being an agent in the act: so also, in the case in question.

And controverted.

49. This also is wrong; for, the cases are not parallel. In the instance of the sacrifice, the substitute is for one, by whom an act was commenced: But in the case proposed, since the act's commencement even, (being completely non-existent,) is impossible, how can there be a substitute? Nor is the commencement of an act, by a substitute, admitted by one versed in logic.

Another mode anticipated and rejected.

50. Or it may be next alleged that there is a precept regarding oblations of food, and so forth, performed only by one having no son, at his own funeral repast (Çráddha), taking place during his life. In virtue of this only, is a substitute [ordained]. This is likewise incorrect: for, if [in this case] there might be, the substitute for a son, the precept itself, regarding the funeral repast to take place during the life of the individual, would be of no effect.—Besides, himself being the agent, in the performance of the funeral repast, taking place during his life; the substitute would be even for himself, not for the son: since the son [in this case] is not the agent.

Conclusion, that in virtue of neither of the precepts proposed, is a substitute ordained, supported by an argument applicable to both.

51. Therefore, in virtue of the two precepts first mentioned, there can be no substitute for a son. Moreover, the assigning also as a reason, "For the sake of the funeral cake, water and solemn rites" (§ 3) would be inapposite; for, it would not apply, to the person to be affected by the point to be proved. It has already been said, that exequial rites, performed by the man having no son, are not suggested.*

Annotation.

51. Moreover the assigning also as a reason, &c.] The following is hazarded as an illustration to this obscure part.—The author adverting to the text of Atri (§ 3), by which the constituting a substitute for a son, by one having no male issue, is enjoined, proposed a discussion, in respect to the particular precept, in virtue of which, such substitute is ordained; accordingly, he suggests and rejects two, viz., that which enjoins the production of a son and that which, directs the performance of exequial rites; and he here uses an additional argument, to support the rejection. If it be held, that the first of these precepts, be that required, then the 'Paksha' or individual to be affected by the point to be proved, is the man wanting a son; the point to be proved, his obligatory production of the same; and the reason (that used by Atri), 'on account of exequial rites.' If the second be regarded, as the precept; the 'Paksha' and reason would be the same, as in the first supposition; and the point to be proved, his obligatory adoption of a substitute. Now it is rule of Logic, that the reason assigned, should bear on the person affected by the point to be proved, and this is not the case in either of these suppositions. To be so, such person (here the man wanting male issue), should be the performer of the exequial rites: but it has been shewn that he is not—It is to be feared, that the author's extravagant affectation of logic, has here illuded him into an error.—His argument is good, on a supposition, that the reason in question is logical, or one of the premises of a syllogism.—It is obvious, however, that it is not so, but is rather used as a cause or motive.

*V. Supra § 47.

Difficulty solved, and a precept shown in virtue of which a son is ordained.

52. The question is thus solved: "By a son, a man conquers worlds, &c." In virtue of the precept, implied in this and other texts, and supported by confirmatory passages, (such as "Heaven awaits not one destitute of a son"); on failure of the legitimate son, the son of the wife, and the rest, are ordained to be, the eleven-fold substitutes; and in the precept alluded to, an act being required, to operate intermediately, in completing the state of Heaven, and the son, severally, as the effect to be produced, and the efficient means: it is added "For the sake of the funeral cake, water and solemn rites."

Import of the term 'always' in Atri's text shown.

53. The term 'always' (§ 3) signifies, that in the present case, no definite period is required, as in such cases, as [that contemplated in this passage] "The barren woman, in the eighth year, is to be superseded."

Other terms explained.

54. The funeral cake] the 'Çráddha' or funeral repast.—Water] that is, the presenting water in the two united palms, and so forth. Solemn rites] meaning, rites in honor of the deceased, cremation and the like. These are the cause (hetu):

A distinct affiliation not necessary, for each exequial ceremony.

55. The reason, occasioning the adoption, is the cause. This, from being used in the singular number, shows, that these ceremonies collectively, are the cause, and not individually; and consequently, the meaning is, that there is not a distinct affiliation, severally for each; but one adoption only, on account of the whole: for, on default of a son, the failure of the oblation of food, and other rites, is the consequence.

As confirmed by a phrase, from a text of Manu.

Which is explained.

56. Accordingly, Manu says "Sages declare these to be substitutes; for, the obsequies would fail (kriyálopát)."* Here, this part, "for, the obsequies would fail" is a reason, subjoined on a negative hypothesis: "The meaning is,—because, if there were no substitute for a son, the obsequies would fail."

Annotations.

52. In virtue of the precept, implied in this and other texts, &c.] The author here shews a precept, in virtue of which, the substitute for a son, is ordained; to which, none of the objections, made to the two first suggested, apply.—In the first place, in the precept, enjoining the conquest of worlds by a son, the son is neither the object or the agent: but the means of the act; therefore, there may be a substitute for a son, in virtue of this precept: again, the objection just made to the two precepts, first suggested, does not apply to this precept. Here the 'Prakáça' or person affected by the point to be proved, is the son: that point, that he is an efficient means for the conquest or attainment of Heavens; the reason, of course as before; and it here, accurately applies to the Paksha: that person, and the performer of the exequial rites, being identical.

55. This, from being used in the singular number.] Atri has in his text 'pindodaka kriyáhetoh' translated, 'for the sake of the funeral cake, water and solemn rites.'—Here, 'hetoh' ('for the sake') is the fifth or ablative case singular, of 'hetu' a cause.

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* Vide supra, § 32

Another exposition of it suggested.

57. Or, there may be this disjunction, [of the compound term 'kriyálopát;' kriyá+] alopát—alopát, would then be, the fifth or ablative case; used after the rejection, of the indeclinable past. participle, formed by the affix 'lyap:' The meaning is,—for the sake of preventing a failure.

Though the wife, and the rest, may perform obsequies: yet, these rites performed by them, are not so beneficial as those executed by a son.

58. "On failure of the son, let the wife be, &c.,"* although, by this and other passages, the capacity of the wife, and other [heirs] also, to perform the obsequies, is declared: still, it must be unquestionably affirmed, that, from the authority of such passages, as this ("heaven awaits not one destitute of a son"), the mansions of the happy, attainable by obsequies, performed by a son, are not acquired by such rites executed by the wife, and the rest. For, otherwise, the wife and other heirs, of one destitute of male issue, being competent to perform rites, which would be equally effective; the specification, of failure [of the son], would be unmeaning; as an alternative results, from such equality.

Conclusion that a substitute for a son, is necessary for a spiritual effect.

Medhatithi on this subject noticed.

59. Hence, for the acquisition of some particular Heaven, to be attained by obsequies performed by a son, the substitute for a son, is indispensable. And, it is said by Medhatithi, "Now, as for the assigning there, the first gradation to the legitimate son, that, is not productive of any temporal effect, [but, on account of] excessive spiritual benefit: to the same extent, as the

Annotations.

57. Or there may be this disjunction, &c.] In disjoining the compound term 'kriyálopát,' occurring in the text of Manu (§ 33), kriyá+lopát, or kriyá+alopát, may be obtained—For, by the rules of orthography: kriyálopát would be equally produced, whether lopát, or alopát, were subjoined to kriyá:—that is in the first case, no permutation of letters, would take place: and in the second, a single long á would be substituted for the final long á of kriyá, and initial short a of alopát. Accordingly, the author after preferring that mode of construction, by which 'lopát' would be read, here indicates the other, which would give 'alopát.'—This latter, is in fact, that adopted by the scholiasts of Manu.

Used after the rejection of the indeclinable past participle formed by the affix 'lyap.'] The term 'lyap' in the text, is used, to denote the participle, of which it is the grammatical affix: its first and last letters are servile. The author alludes, to an emendatory rule of Kátyáyana, on Pánini, 2-3-28—the result of which, is this,—If a mode of expression, composed of an objective or accusative case, and the indeclinable participle ending in 'lyap,' might have been used, but is rejected: and the ablative or fifth case be adopted; it denotes the object to such participle.—Thus, "he sees from the top of the house (prasádát)" that is: "having mounted (aruhya), the top of the house, he sees." In the same manner, the author regards the ablative case 'alopát,' where, the second mode of construing the term kriyálopat, occurring in Manu's text (§ 33), may be preferred; thus, "sages declare,——on account, of preventing, a failure of obsequies (kriyálopát):" that is,—'having intended a prevention, of a failure of obsequies' (kriyálopam-udeçya).

58. As an alternative result.] The rites might be indifferently performed, by the son, or wife and other heirs.

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* Çankha. The sequel is thus "[The performer of the funeral rites]: on her default the whole brother."

legitimate son, can confer much benefit, the others are unable—and 'substitute' as generally accepted, implies a diminution of benefit."

Interpretation by that author of the phrase 'kriyálopát' cited.

60. Kriyálopát.] The 'kriyá' or act, here alluded to, is from "'kriyate,' what is done:—the precept [by which it is enjoined], 'offspring' must be produced.' Let there be no omission (lopa), of this.—This precept is peremptory: in some manner, or another, it must be accomplished, by the householder. Of the offspring alluded to, the real legitimate son is the first in rank; should such not be acquired, these descriptions of sons [that of the wife and the rest], must be resorted to."—This interpretation by that author [Medhátithi] alone, must be canvassed. It is said [by him], that, the precept directing the adoption of the son given, and the rest, is a substitute for that directing the procreation of a son; or perhaps that the son given, and the rest, are the substitutes for a legitimate son?

And canvassed: either of two meanings attributed to the author;

The first shown to be inaccurate.

The second also.

61. Of these [supposed meanings], the first is not correct: for, the substitute of an act, is forbidden, in the passage "of the divinity, fire, a word, an act, &c." Neither, is the second accurate; since it would be at variance, with preceding passages [of the same author]; such as, "These [the wife's son, and the rest] cannot be substitutes, &c." (§ 36). For, in this passage it is declared, there can be no substitute for a son: as a son, by reason of being the object to be produced, is no means of completion.

Correct interpretation of the term 'kriya' shown.

62. Therefore, from the term 'kriya' (in the expression 'kriyálopát'], the precept to produce a son cannot be inferred; but on the contrary, funeral rites alone must be understood; on account of unity of import with the text of Atri, which expresses: "For the sake of the funeral cake, water and solemn rites." It would be useless [to enlarge.]

Annotations.

60. Kriya or act, &c.] Medhatithi, the author of a commentary on Manu, explains the term kriya, occurring in this phrase, as signifying the act of acquiring a son. This is contrary to the interpretation of other scholiasts, and general acceptation: according to which, in this and similar passages, it bears its secondary sense of, 'obsequies' or 'solemn rites,' &c.

By the householder.] The Grihi or householder, is the second of the orders or stages (açrama), prescribed for the devout. These, are thus enumerated, in Mr. Colebrooke's translation of the Kosha of Amara Sinha—1st. The religious student (Brahmachári) who has received investiture, and is unmarried.—2d. The householder (Grihi) or married man.—3d. The hermit or anchoret (vánaprastha.)—4th. The mendicant or ascetic (Bhikshu).

63. 'Prayatnatas' (resource)]. The affix 'taçil' of the fifth case, is used to form this word, for the sake of agreeing in construction, with the preceding terms "yasmat tasmát" (with some one): and consequently the meaning is, that by some one resource (or mode) whatsoever, a substitute for a son is to be affiliated.—And, although in that text, any resource in general, is mentioned, still, since eleven descriptions of sons have been ordained, eleven resources only are recognized.

Explanation of Atri's text resumed.

64. "Sons of many descriptions, who were made by ancient saints cannot now be adopted by men: by reason, of their deficiency, of power, &c." On account of this text of Vrhaspati, and because, in this passage, ("There is no adoption, as sons, of those, other than the son given, and the legitimate son, &c.") Other sons, are forbidden by Çaaunaka; in the kali or present age, amongst the sons however, [who have been mentioned,] the son given, and the legitimate son only, are admitted.

The son given, and the real legitimate son, however, are now only admitted.

65. The term "given" is inclusive also, of the son made, (kritrima) on account of a text of Paráçara, on the occasion of treating on the law of the kali age, which expresses, "The son of the body, (aurasa) the son of the wife, also, the son given, the son made, &c."

Term 'given' illustrative of others on account of a text of Paráçara.

66. Nor, is it to be argued from this, that, in the kali age, there may be the son of the wife [technically so called]: for, such is forbidden, by the mere prohibition, against the appointment in that age, [of a wife to raise issue to her husband by another.]

The mention there of the wife's son, does not prove that such son in its technical sense may now exist.

67. Should it be contended, that, then an option would proceed, from the wife's son, being ordained, and forbidden [by different authorities]. It is wrong, for many objections would be the consequence.

Contrary argument of an adversary anticipated.

68. Again, if it be asked, in what light then, the mention of the son, of the wife, in this passage, [must be regarded]? We reply, as an epithet of Aurasa, (the son of the body). Accordingly Manu says: "Him, whom a man has begotten on his own wedded wife, let him know to be the first in rank, as the son of his body, (Aurasa)."

And the mention of the expression reconciled.

Annotations.

63. The meaning is, that, by some one resource, &c.] The author presently will apparently forget this his interpretation of the term prayatnatas, occurring in Atri's text. In Sect. 4, § 21, he suggests, that, the same word, in a text of Çaaunaka, may signify 'on account of the distress of the adopter': viz., the want of male issue. This he confirms by referring to the text of Atri; thereby indicating that the word in question, has there, a similar import.

67. Many objections.] In the original 'eight' occurs: a definite, for an indefinite number.

SECTION II.

Who is to be adopted ?

Rules regarding the adopted son.

Topics suggested.

1. Of these two : the rules regarding the 'Dattaka,' or adopted son, are now propounded. The three points, on this subject, to be considered, are,—who is to be adopted ? how qualified ? and in what manner ?

Çaaunaka on the subject of the first cited.

2. As to the first of these points, Çaaunaka has declared ; "the adoption of a son, by any Bráhmaṇa, must be made from amongst 'sapiṇḍas' or kinsmen connected by an oblation of food ; or, on failure of these, an 'asapiṇḍa' or one, not so connected, may be adopted : otherwise let him not adopt."

Import of the term 'sapinda ;' who may be of the same, or a a different general family.

3 "From amongst 'sapiṇḍas'."—That is, from amongst such kinsmen, extending to the seventh degree inclusive : and the term being used in its general sense, it follows—'from among such kinsmen belonging to the same or a different general family (gotra).'

Vṙddha Gautama cited as authority.

4. Of these, with respect to the being of the same general family, this text of Vṙddha Gautama, is an authority—"The sons given, purchased, and the rest, who are adopted, from those of his own general family, by observance of form, acquire the state of lineage (gotratá) [to the adopter]. But the relation of sapiṇḍa, is not included.

The term "gotratá" used, interpreted.

5. State of lineage (gotratá) [that is, the condition of offspring (santatitva) ; for, a passage from the Káliká Puráṇa recites—"Sons given, and the rest, though sprung from the seed, of another, yet being duly initiated [by the adopter], under his own family name, become sons [of the adoptive parent]"—and in the Trikáṇḍa or vocabulary, of Amara Sinha, the terms 'santati,' and 'gotra,' are exhibited with others, as synonyms signifying 'race or lineage.'

Annotations.

4. The text of Vṙddha Gautama]. Nílakantha, in the Vyavahára-Mayúkha denies the authenticity of the text quoted.

5. And in the Trikáṇḍa, &c.] In the text, a verse from the Trikáṇḍa is cited at large.

Supposition that the term in question might mean connection by family refuted.

6. Nor, by the term 'gotratá,' is connection by the same general family, declared: for, the declaration would be unnecessary, as that connection is obvious, from the affiliation, taking place only, from amongst those of the general family, of the individual himself.

Import of the close of the text in § 4.

7. "But the relation of sapiṇḍa is not included"—By this, in the case of the affiliation, of one not being a 'sapiṇḍa,' such connection, as extending to both the fifth and seventh degrees, is barred.

Authorities as to the adoption of one of a different family: Manu and Vṛhat Manu.

8. With respect to the affiliation, of one, belonging to a different general family, the following passages, severally, from Manu, and Vṛhat Manu, are authorities. "A given son, must never claim the family, and estate of his natural father, &c.* "Sons given, purchased, and the rest, retain relation of sapiṇḍa, to the natural father, as extending to the fifth and seventh degrees:—like this, their general family, [which is] also, that of their adopter."

Subordinate class propounded.

9. That, which has been explained, is the primary class: in case, [the adoption] cannot be made from this, the author [Çaunaka] propounds a subordinate class; "on failure, of these, an 'asapiṇḍa,' &c." 'On failure of these,' that is of the sapiṇḍas, or kinsmen connected by an oblation of food, a person, not so connected (a sapiṇḍa), must be affiliated.

Which may also be sub-divided.

10. Those not sapiṇḍas are kinsmen beyond the seventh degree and persons not allied at all. And these also are of two descriptions: those belonging to the same, and those belonging to a different general family. For this also the passages before cited are authorities.

Result deduced from what has preceded.

11. Of what has preceded, this is the abstracted meaning.—The 'sapiṇḍa' belonging to the same general family, is the first [in rank]: on failure of him, such kinsman of a different general family.

Sapiṇḍa of a different family preferable to one of the same family, not a sapiṇḍa.

12. Although the "sapiṇḍa" of a different family, and a person of the same family, but not a "sapiṇḍa," are both equal with respect to their severally wanting a quality possessed by the other: still, however, by reason of propinquity, the individual deriving his claim, from the connection as "sapiṇḍa," is prefer-

Annotation.

8. Passages severally, from Manu, and Vṛhat Manu]. The authenticity of that attributed to Vṛhat Manu, is denied in the Vyavahára-Mayúkha.

* Manu 9,142. This text is subsequently quoted at large. v. infra. Sec. 6, § 6.

able, to him claiming by family; and hence it is, that though of a different family, a " sapinda" even, from the family of the maternal grandfather, must be adopted.

Deduced result, continued.

13. In every case, on default of a "sapinda," one not related as such, is to be adopted: of this description, the kinsman allied by a libation of water (sodaka), to the fourteenth degree, being of the same general family, is the nearest;—On failure of him, one not so allied, but of the same general family, to the twenty-first degree; and on defect of such also, one, not belonging to the same general family, and not related as a 'sapinda.'

Confirmed by Sakulya.

14. Sakulya has declared this, " Let a regenerate man, being destitute of male issue, adopt as a son, the offspring of a 'sapinda' kinsman: or next in order, the son of one of the same general family (sagotra): on defect of such, let him bring up one born in a different general family."—By the expression 'sagotra,' those allied by a libation of water (sodaka), and belonging to the same general family, are included.—Now, in this text, the proximity [in order], of each successively, is particularly shewn.

Vasishtha also.

15. Vasishtha, also propounds the same— "should take an unremote kinsman or near relation of a kinsman, &c."

Illustration of the passage cited.

16. The construction of this passage is thus. He is an unremote kinsman, who is both a kinsman, and in a near degree;—meaning, a near 'sapinda.'—Now, propinquity is of two descriptions,—by belonging to the same general family,—and by the intervention of few degrees. Of those allied by propinquity, the 'sapinda,' of the same general family, and removed by few degrees, is the principal: on default of him, a 'sapinda' of the same general family, though removed by many degrees; on failure of such, a sapinda belonging to a different general family: on defect of this latter also, " the near relation of a kinsman,"—meaning, of a 'sapinda' kinsman, the near relation or 'sapinda,'—being one allied to the individual himself, by libations of water (sodaka), but not his 'sapinda.' Such is the import which is deduced.

Illustration continued.

17. Relationship also, there alluded to, is of two descriptions;—by belonging to the same general family,—and by the intervention of few degrees. The first in rank, is the 'sapinda' kinsman, of such kinsmen of the man himself, removed by few degrees, and belonging to the same general family, as that person, though not his own sapinda. On defect of such, the 'sapinda' of his own 'sapinda' kinsmen, being of the same general family, though removed by many degrees.—One connected by a libation of water, is intended.

And concluded, by shewing that one neither a sapinda or sagotra, is meant, as an object of adoption, in the last instance.

Çankha cited.

Vasishtha.

18. If a 'sapinda,' or 'sodaka' relative, cannot be procured, one belonging to the same general family, to the twenty-first degree, must be adopted: should none such exist, a person of a different family, although not a sapinda, must be adopted; for, the text of Çaunkha (§ 2) expresses, "or, on failure of these, an 'a sapinda:'" and this is indicated by Vasishtha, [who says,] "But if doubt arise, let him set apart like a Çúdra, one whose kindred are remote."

Passage of Vasishtha, quoted, in the preceding §, explained.

19. He, whose kinsmen are distant, is 'one whose kindred are remote:' the meaning is,—one not allied by an origin from the same stock, or by the relation of 'sapinda.' The doubt, alluded to in this passage of Vasishtha, regards lineage, disposition, and so forth: it arises in the case, of one unconnected as a 'sapinda,' and not sprung from the same general family. This is also implied in the passage, "otherwise let him not adopt." (v. § 2).

In all instances of adoption, the adopter, and adopted, must be of the same class.

20. Although none other than such as are connected, as 'sapindas' and not so, can exist: still, since by this sequel of the text, ("of all, and the tribes likewise, in their own classes only, not otherwise"*) those, connected as sapindas, and not so, are qualified, as being of the same class; both sapindas, and those not such, who do not belong to the same class, are excluded [from being adopted]. For, they might be inferred as a subordinate class, by the rule of logic "What is not denied, is admitted."

As is ordained by Vrddha Gautama.

21. Accordingly, Vrddha Gautama† forbids the participation in inheritance, of one, not of the same tribe, thus,—"or should one of a different class be taken as a son, in any instance, let him (the adopter) not make him a participator of a share, this is the doctrine of Çaunaka."

One of a different class cannot be adopted.

22. Hence, it is established, that one of a different class cannot be adopted as a son.

Manu indicates as much: whose expression 'alike' in the text here cited, means, of the same class.

23. Accordingly Manu. "He is called a son given, whom his father, or mother affectionately gives, as a son, being alike, &c."‡. Alike,] that is,—of the same class; for, a text of the chief of the saints (Yájñavalkya) expresses, "This law is propounded by me, in regard to sons, equally by class."

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* Çaunaka subsequently quoted, v. § 74.

† By an error of the author or his transcriber Vrddha Gautama, has been written for Çaunaka, v. infra, § 32.

‡ Manu 9, 168.

An apparently conflicting use of the same term, by that author, reconciled.

24. As for what has been said by Manu himself; "He is called a son bought, whom a man, for the sake of having issue, purchases of his father, and mother: whether the child be like or unlike"*: this must be interpreted, whether alike, or unlike, in qualities, not in class.

And contrary interpretations by Medhátithi, and in the Kalpataru refuted.

25. "Alike not by tribe, but, by qualities suitable to the family: accordingly, a Kshatriya, or a person of any other inferior class, may be the son of a Bráhmaṇa." As for this interpretation of Medhátiṭhi, and one in the Kalpataru, "a Çúdra even is certainly a son, such is the meaning:"—these both must be rejected, on account of their repugnance, both to the passage from Yájñavalkya before cited, ("This law is propounded by me in regard to sons, equal by class")—and the text of Çankha, which recites, "[in their own] classes only: not otherwise."†

The Çúdra son, propounded by Manu, is one born out of wedlock of Çúdra parents.

26. "A son self-given, and a son by a Çúdra, are the six kinsmen, but not heirs."‡—The enumeration by Manu, in this passage, of the son by a Çúdra as a substitute, must be explained, as meaning, that, one procreated by a Çúdra, on a female slave, but not born in wedlock, inasmuch, as he is not a principal son, is a substitute for the same. For, a text of Yájñavalkya expresses "Even a son begotten, by a Çúdra on a female slave, may take a share by the father's choice. But, if the father be dead, the brethren should make him the partaker of the moiety of a share: and the one who has no brothers, may inherit the whole property, in default of daughter's sons."||

This is supported by Yájñavalkya.

Annotations.

24. As for what, &c.] The author has copied this § nearly verbatim, from the Mitákshará, on inheritance.—The reader is referred to Colebrooke's translation, Chap. 1, Sec. XI, § 16, and the note subjoined.

25. As for the interpretation of Medhátiṭhi.] This gloss of Medhátiṭhi, is noticed by Mr. Colebrooke, in his translation of the Mitákshará on inheritance. Vide note, subjoined to Chap. 1, Sec. XI, § 9, in which the text of Manu here cited in § 23, is quoted.

26. By Manu in this passage.] The text, of which part is quoted, in its complete state, is thus—"The son of a young woman unmarried. the son of a pregnant bride: a son bought; a son by a twice-married woman: a son self-given, and a son by a Çúdra, are the six kinsmen: but not heirs.'—The author obviates the inference, which might be drawn from this, that a son by a Çúdra woman, and consequently of the servile class, may be a subsidiary son, of his natural father of a superior tribe.

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* Manu 9, 74. † V. Infra, § 74. ‡ Manu 9, 166.
|| Yájñavalka 2, 134, 135.

Conclusion that the term 'alike' means of the same class.

27. Hence, the explanation by Aparárka, of the term in question, is only correct; "alike, being of the same tribe, &c." Yájñavalkya also.—"This Law is propounded by me in regard to sons, equal by class."

A nephew must be first selected for adoption.

28. Now, amongst near sapiṇḍa kinsmen of the same general family, a brother's son only must be affiliated: and this doctrine is recognized also, by Vijñaneçvara.*

He must be the son of a whole brother: as shown by Manu.

29. By the position, that, 'a brother's son only must be affiliated,' it is meant, that the son of a whole brother only, must be affiliated. Manu declares this:—"If one, among brothers of the whole blood (ekajáta), be possessed of male issue (putraván), Manu pronounces, that, they all are fathers of the same, by means of that son."†

From the text cited, it is argued, a brother cannot be adopted.

30. In this text, the state of brothers, as adoptive fathers, being propounded, their incapacity to be the objects of adoption follows.

And brothers of the half blood, cannot be the adoptive parents, such as there alluded to.

31. Of the whole blood]. By this expression it appears, that, this condition of adoptive fathers alluded to, applies to those only, begotten by the same father, on the same mother, not to such as are born of a different father or mother.

The masculine gender being used sisters are not included, in this reciprocal state of adoptive parents.

32. Brothers.] From the masculine gender being used it results that brothers, and sisters also, of the whole blood, are not reciprocally the adoptive parents of the son [of any one of them]: and this conclusion is confirmed by the mention of two terms [in that gender]. Vṛddha Gautama, declares the same. "In the three superior tribes, a sister's son, is nowhere [mentioned as] a son."‡

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32. By the mention of two terms, &c.] In the original of the text of Manu, "of the whole blood (ekajáta)" is an epithet of 'brothers,' agreeing with that term, in gender, case, and number.—These may be the two terms alluded to, or, they may be 'brothers', and the term 'one' represented in the original, by the word 'ekaḥ', which is in the nominative case, and masculine gender, of the singular number.

* Author of the Mitákshará, vide translation Chap. I, on inheritance, Sect. XI, § [illegible]

† Manu 9, 182.

‡ This passage is a portion of Çaunaka's text cited in § 74. It may belong however to both authors: but it is most likely that in the same manner as in the preceding instance; the author has here erroneously substituted the name of Vṛddha Gautama for that of Çaunaka. (V. § 21).

Vriddha Gautama supports this.

And completely, as the term 'sister's son' is explained to include a brother's son.

33. The expression 'sister's son,' is inclusive of the son of a brother also. Hence, this meaning is deduced, that, a brother's son must not be adopted by a sister; for, brothers only are mentioned, to be adoptive parents [in the text of Manu § 29].

In Manu's text (§ 29), the epithet ekajáta, signifying of one kind, bars the reciprocal affiliation, by brothers and sisters, of their sons respectively, inferrible by construing 'brothers' as a complex term standing for both.

34. "'Brother' and 'son,' when occurring in combination, severally, with 'sisters' and 'daughter,' are retained; [the other terms being omitted.]"* Although, by this rule of grammar, [the term 'brothers'] may be a compound, formed by the retention of one term, and omission of an other: and thence, the reciprocal affiliation, by a brother and sister, of a sister's and brother's son, respectively, might be inferred: still, those are 'ekajáta,' whose játa or játi (kind) is the same: for, these words with 'samánya,' are cited in the dictionary, as synonimes signifying kind or sort;† [therefore,] since by 'ekajáta,' the epithet of 'brothers,' it is intimated, that, those [signified by that term,] are of the same kind, the affiliation, by brothers, who are male, of a brother's son, and by sisters, who are female, of a sister's son, would be established. The adoption of a brother's son by a sister, or a sister's son by a brother, could not take place, on account of the difference of their kind, in being male and female [respectively.]

Objection, that the term 'ekajáta' cannot at once import two meanings over-ruled, by the authority of Vijñaneçvara, who explains in two distinct

35. But the single expression 'ekajáta,' once uttered, cannot bear two meanings, namely, 'being of the whole blood,' and 'being of the same kind': for, this maxim in logic, would be contradicted; "A term once uttered, conveys a single meaning."—Should this objection be made, it is wrong: for, the word 'sansrishta,' occurring in the following passage, has been explained by Vijñaneçvara, as signifying, a whole brother, and re-united as a co-parcener: "......though not re-

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35. The word 'sansrishta' occurring in the following passage, &c.] The very obscure text, of which a portion is cited, is the following of Yájñavalkya. "A half brother, being again associated, may take the succession, not a half brother, though not re-united; but one united (sansrishta), &c., &c., &c."—In his gloss on this passage, Vijñaneçvara, the author of the Mitákshará, holds that the word 'united' (in the same manner as the expression 'not re-united,') is connected, with both its preceding, and following terms; and that accordingly, in one sense it means, united by blood, or a whole brother and in the other, (that is, taken as an epithet, of the son of a different mother,) it signifies re-united, as a co-parcener: *vide* Colebrooke's translation of the Mitákshará on inheritance—Chap. II, Sect. IX, § 7, 9, and 10 and notes subjoined.

* Pánini 1, 2, 68. † Dictionary of Amara, Book 1, chap. 1, sect. 1, verse 9.

senses, a word used in a text of Yájňavalkya.

united; but one united (sansrishta) [by blood, though not by co-parcenery] may obtain the property, and not [exclusively] the son of a different mother."* So even, in the present case likewise. Thus, there is no inconsistency. Sufficient has been said.

The case of two brothers, is included by the plural number, in which, 'brothers' is expressed.

36. The plural number is inclusive also, of the dual: for, two are contained in many: and the being son of two fathers, is shewn in the following text: "If he be son of two fathers, let him designate both, in each distinct oblation of food."

The force shewn of the word 'one' used by Manu.

Who sanctions the affiliation of the only son, of a single brother.

37. "If one"—that is, 'if one even'] By this, where two or more are the fathers, the author implies a fortiori, the more easy adoption of a son, by the others, destitute of the same: he does not bar, the affiliation of the only son of a single brother: on account of,—the cogency of the specification of the term 'one,'—and the singular number, in the expression 'that son.' The derivative adjective 'putraván' possessed of male issue, applies to him, of whom, there are, one, two, or more sons.

The prohibition of the gift, in adoption, of an only son, does not refer to the case proposed, the reason not applying.

38. And hence, from the sanction of the gift, of an only son even, in the present case, there is no room, for the application of the prohibition, ("Let no man give or accept an only son, &c.") For, since, as propounded in the sequel of this text, assigning the reason ("For he is [destined] to continue the line of his ancestors,"†) the continuation, of the line of his ancestors (the father, and the rest), is completed, by means of a son, although common to two brothers: it is established, that the prohibition in question, refers to persons, other than brothers.

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37. He does not bar, &c.] The author here further supports his position, (in § 36), and also alluding to the prohibition, in the text below noticed, shews that Manu in his text (§ 29), intimates that an only son of one brother, may be affiliated by another brother; for, by the singular number in the expression "that son" the case of one brother having a single son even, is implicated: the term 'putraván' applying, as well to a person having one son only, as to him, who has more.

The derivative adjective 'putraván']. This is designated in the original, by the affix 'matup,' by the subjunction of which to 'putra,' the derivative noun, 'putraval' in its crude state, of which, 'putraván' is the inflected nominative case, is formed. Thus the 'up,' of 'matup,' is redundant: and by a special rule, the 'm' becomes, 'v,' where the last vowel of the root, (as in this case,) is the short ă, or á—In his illustration of this derivative, the author alludes to Pánini 5, 2, 94; by which rule, it is used to supply

* Yájňavalkya, 2, 140.

† Vasishtha, 15, 3.

39. Besides, as gift, consists in the creation of an other's property, after the previous extinction of one's own; and this is forbidden, by the text quoted;—and since, in the case proposed, there is no extinction of property, by making the son of one brother, common to both;—the sense of the word gift, [as applied thereto,] like the gift of a daughter in marriage, is figurative.

And besides, the application of the term gift, to the case in question, is figurative.

40. Since the word 'putra,' [in 'putraván,' 'possessed of male issue'] in its sense of the real legitimate son, is primary, it is established, that, those designated by that term, are sons of that description only: and consequently it follows, that there is no adoption, [by other brothers,] of the substitute for the real son, made by a brother.

The adopted son, however, of one brother, may not be affiliated by the rest.

41. Since by the verb 'be' [in the present tense,] the actual existence, of the condition of possessing male issue, is declared; [the author] excludes such condition, as past and future: and hence, the benefit, mentioned, in such texts, as ("should the father see the face of a living son, &c.") does not accrue to one brother, by the means of the deceased son of another:—neither, in the expectation of an unborn son, [of a brother,] must the adoption of another, be omitted.

Adoption of another should not be omitted in the case of the death, or the hope of the birth of a brother's son.

42. Since, the brothers only, destitute of male issue, would be designated by the pronoun, 'they'; 'all' is added, with a view to obviate [any inference], as to the want of relation, of the natural father, to his own son.

The force of the word 'all' used by Manu, shown.

43. As 'they' is a compound, formed by the retention, of one term, and omission of others, being resolvable into the phrase "he and they (dual and plural)"; at the desire of one, two, or more [Brothers], for male issue, the affiliation of a brother's son, takes place.

Of 'they' also.

44. 'By means of that'.] By him even, by whom, the natural parent becomes the father of male issue, do all the brothers also become so.—'Son.'] From the use of the singular number, the relation as son, of one even, to many, being declared; the prohibition, contained in the text, "Let no man give or accept an only son" is not applicable here: as indeed, has been already declared. (§ 38).

Import of other terms given.

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a periphrasis, combining a nominative case, governing the verb 'to be,' and in construction, with a genitive or locative case. Thus, 'Gomán'—one of whom there are cows. 'Brikshaván,—woody: applied to a place in which there are trees.

Case in point of Vetála and Bhairava cited from the Káli-ka-purána.

45. And accordingly, in the Káli'ka-puráńa, an indication of Vetála and Bhairava, sons, of Çiva, becoming both fathers of male issue, by means of the same són, is thus found :" The sages said: 'There is no salvation for one destitute of male issue. This is recognized in the world and Vedas. Vetála and Bhairava formerly went to a mountain to perform devotion. Previous to that, they were unmarried, and sons of them, are not mentioned, [as having been born or not born. If sons were born, O excellent of the regenerate,] we much wish to hear, the particulars concerning them.' Markandeya replied; 'salvation is not for one destitute of male issue, both in the next world, and in this:' O excellent saints, those, who are fathers of male issue, by means of their own sons, and those of brothers, attain heaven.' Having in this world attained great perfection, when Vetála and Bhairava reached the abode of the great deity, they were happy on the hill Kailása. Then, Oh! twice-born men, Nandi* by the order of Çiva, as one consoling addressed them,

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45. Çiva.] Or the great deity is mentioned in this extract, under his names, 'Sankara,' or the benefactor, and 'Hara' or the destroyer.

The sages said, &c. &c.] It is to be feared that an instance here occurs of literary fraud, too commonly practised among Hindu authors, and perhaps those of every nation, where the art of printing has not reduced works of authority to an accurate and unvarying standard. On collating this pretended extract from the Kálika-puráńa with a copy of the original, it proves to be artfully mangled and fabricated. Indeed, were an extract authentically made from that work, it would tend to establish the converse of the position, in favour of which it is adduced.—The following notes will explain these assertions :

And sons of them are not mentioned.] The translator has supplied from the Kálika-puráńa what here follows between these marks [ ], with a view of rendering the passage the more intelligible. This part has been apparently omitted by the author, to favour the omissions below noticed.

Both in the next world and in this.] Instead of 'pretyachêhacha' thus rendered, in the copy of the original Kálika-purána, consulted by the translator, 'nischitanchéti,' occurs, meaning, 'and this is certain.' The circumstance of three copies of the author's work concurring in the former reading, deterred the translator from adopting the latter, which in point of sense, is unquestionably the preferable.

Attain heaven.] A stanza of the original immediately following here has been purposely omitted : It is to this effect "Oh, Bráhmanas, the sages Vetála and Bhairava had offspring born to them. Listen illustrious saints, while I declare their progeny."

Is easily attained.] Here stanzas to the following effect have been purposely omitted :—"One destitute of male issue, beholds the hell named Put.—None can escape from that, either by religious austerities or devotion : Liberation from it proceeds from the production of a son only. Therefore, beget ye sons on the bodies of divine females ; your immortality has been produced, by drinking the milk of Kátyáyana :† therefore procreate immortal sons on immortal beings : wherefore having in any manner produced sons from the bodies of celestial beings, your welfare will quickly follow."

We will make one [son] only.] The author by the substitution of one letter for another, has ingeniously produced a sense directly opposite, to that of the Kálika-puráńa. The Dattaka Mímánsá reads ekamevá, '[one] only;' the original 'evameva,' by which the sense would be, "we will do thus even."

* One of the celestial attendants of Çiva. † A name of the goddess Durgá.

in private, in the following true and instructive speech: he said "Do you sons of Çiva, destitute of male issue, exert yourselves in the production of a son. By one to whom a son is born everywhere salvation is easily attained." Markandya continued:—'having heard these words of Nandi, they became elated in their hearts, and said to him: "we will make one [son] only." Accordingly Bhairava, at some time, copulated with Urvasi, a celestial nymph, and procreated on her a son named Suveça. Vetála also affiliated him as his son: and in consequence, by means of this son, both attained heavenly salvation.'"

Dilemma suggested as an objection.

46. But must not this relation of one as son to many [brothers] be either produced at once, or in gradation? Not the first: for, there is no precept enjoining that they should receive in adoption at once. Nor is the other supposition accurate: for a boy precluded by a previous initiation, another initiation of the same description as the first, cannot be performed.

Refuted.

And the conclusion, that a nephew may be given, to several associated brothers, supported by the analogy, to the 'Tulápurusha' gift.

47. Should this be alleged, it is wrong: for, analogous to the case exemplified in the passage ("seventeen are inferior and twenty-four superior sacrifices, &c."), the words 'they,' and 'all,' being the abridged form of the conjunctive compound: the association of the adopting brothers, is meant to be declared thereby: hence the gift even [of a son] to several brothers associated, is valid. In the same manner, as at the religious gift denominated 'tulápurusha,' the united officiating priests are the objects to whom it is made, and the receivers.

The analogy in this instance indicated by Váchaspati Miçra.

48. Váchaspati Miçra declares the same, thus: "since the plural number is used in "officiating priests" in this passage, ('Having thus prayed to the gods, let him give the officiating priests ornaments of gold,') the whole of them conjointly even, are the object, to whom the gift is made: and hence, after having placed, his

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Accordingly Bhairava at some time, &c.] What follows from this part, to the end of the alleged extract, appears to be a fabrication. It is cited indeed in the Dattaka Chandriká, as from the Kálika-purána: but is not found in that work. On the contrary, it is related with much prolixity, in the Kálika-purána, that Bhairava had a son Suveça, by Urvasi: but it is not written, that such son, was adopted by his brother, who is mentioned as having raised distinct male issue to himself.

47. Religious gift denominated 'Tulápurusha.'] This gift (as its name denotes) is, where for pious or auspicious purposes, the donor presents united Bráhmanas, with his weight in some substance: some years ago Rája Rájkishn, publicly gave away in Calcutta, his weight in gold: instances of such pious, or rather ostentatious munificence, are of course rare: though this gift in barley, rice, salt, &c. is prevalent throughout the country:—It should be observed, that it must not be made to an individual Bráhmana.

spiritual preceptor's hand, above all, and arranged in order under it, those of the officiating priests, who read the Rig-veda, &c., the ornaments are to be given."

There is no anomaly in the filial relation of one to many; it is supported by analogy.

49. Nor is even, the being son to many [brothers], at the same time, anomalous: for, analogous to Draupadi's, being the wife [of several brothers] by simultaneous acceptance, that relation of one, as son to many, though somewhat differing, is acknowledged; like the recognised state of the 'Dvyámusháyaná' or son of two fathers.

In § 29, Manu implies that there must be an act of the adopting brother to establish the filiation of his brother's son as his own.

50. "Fathers of male issue, (Putrinah)]. "Of whom, there is a son."—By the verb 'is' (signifying existence) in this phrase, (into which this derivative adjective resolves,) since existence is declared; and existence not applying to one who has not been produced, an act of the adoptive fathers is implied.

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49. Analogous to Draupadi's being the wife, &c.] Draupadi was the wife of, and received in marriage at the same time by, Yudhistira, Bhima Séna, Arjuna, Nakula and Sahadeva, the five sons of Pánda, a king of Indra Prastha (Delhi). The following particulars, relative to this circumstance, are mentioned in the Mahábharata: Draupada, the father of Draupadi, was the sovereign of the Punjab country. He had heard of the virtues of Arjuna and his unrivalled skill in archery: and secretly desired him for his son-in-law. To promote this object, he caused to be erected a pole, on which a wheel having a hole in it, and which constantly revolved, was horizontally placed. He also proclaimed a vow, that he would bestow his daughter to the person whoever might succeed in discharging an arrow from underneath through the hole of the revolving wheel, so dexterously, as on its descent, to fall through the same aperture. A particular day was appointed for the trial: and he invited princes of the vicinity, and persons of all degrees assembled at the court of Draupada. Previous to this, Arjuna, and his brothers had become ascetics—Bhima appeared at the place of trial, with other religious mendicants; and when no one in the assembly would attempt so difficult an undertaking, by the advice of his companions, brought his brother Arjuna from their abode in the city.—Arjuna advanced to the trial and accomplished the task imposed.—Draupada would have fulfilled his vow, but the princes and others, jealous of the success of one apparently so mean, attempted with force to prevent his receiving the prize his skill had won. Arjuna, however, with the assistance of his brother, succeeded in carrying off Draupadi.—Having arrived at their habitation, Arjuna addressed his mother, who was reclined with her face covered, that "he had brought something."—To this the mother (her face still covered) replied, by directing him, to divide it, whatever it was, equally with his brothers; and afterwards, when aware of the object, to which her son alluded, would not retract her injunction.—In the meantime, with the advice of Draupada, his priest repaired to the abode of the brethren, and secretly listening to their conversation, discovered, who they were: with this information, he returned to his master, who the next morning invited the whole family to his palace, for the purpose of solemnizing the nuptials of his daughter, and Arjuna. They attended with Draupadi.—The preparations were commenced, and when the king formally proffered his daughter in marriage to Arjuna, he explained the nature of his mother's command: and that he would not espouse her, except in conjunction with his brothers. The king reluctantly consented, and Draupadi was received in marriage, at the same time, by the five brothers.

50. This phrase into which this derivative adjective resolves.] The Sanskrit reader will perceive that a literal version, here, has not, and indeed could not well have

This is indicated by Atri.

Vasishtha.

And Çaunakha.

51. And accordingly Atri. "By a man, destitute of a son only, must a substitute for the same, be made, &c."—Vasishtha also: "A person being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the holy words, in the middle of his dwelling." Likewise Çaunakha: "Having advanced before the giver, let him thus cause to be asked, 'Give this son,' &c."

A term used by whom is explained.

52. "Cause to be asked."] Here, by the causal form of the verb being used, it is meant:—'Let him ask, through a Bráhmaṇa employed for that purpose.'

The contrary doctrine refuted.

53. And consequently, the position that, the son of a brother though unadopted, bears filial relation to his paternal uncle, on account of this text of Vṛihat Parásara, ("Let the nephew of a paternal uncle, destitute of male issue, be his son: he only should perform his obsequies, of the funeral repast, and oblations of food, and of water,") is refuted. For, without an act of the adoptive parent, filiation, as his son, is not accomplished.

An act of the adoptive father, is implied in the cases of the sons of hidden origin, and self-given.

54. It must not be argued that in the cases of the son of hidden origin and the son self-given, there is no act of an agent, [as adopter]; because, in these passages,—("one secretly born in the house, is considered a son of hidden origin"—"Self-given, meaning, given by himself") no such act is mentioned. For, it is inferred, as otherwise, the consecution of an effect, to an act, would not be attained.

Were Manu and Parásara (§ 29 and § 53) literally construed; it would follow, there were thirteen sons.

55. Therefore, the text of Manu, and Vṛhat Parásara (§ 29 and 53) are not pertinent, to the extent of their verbal import; for, thirteen descriptions of sons would be the consequence.

Which would be at variance with the enumeration of twelve, by Manu.

56. Nor would thus, what was intended result: for the enumeration of twelve, in this text, would be contradicted: "of the twelve sons of men, whom Manu, sprung from the self-existent, has named: six are kinsmen and heirs; six not heirs, but kinsmen."*

Annotations.

been given. 'Putrinah' cited from Manu's text (§ 29) is the nominative case plural, of the derivative, formed by the affix 'in.' This is used in the same sense, as that formed by the affix 'matup,' already noticed in § 37 and note subjoined, and is consequently illustrated by the same periphrasis which Narda Paṇdita, accordingly introduces. v. Paṇini 5, 2, 115.

* Manu 9, 158.

Opponent's argument that such contradiction, is no objection: as the enumeration of sons is, variously specified by a text of law.

57. But, may not this contradiction of number be admitted on account of the passages below cited? Firstly: A different text of law: "The legitimate son, the appointed daughter, the son begotten, on another's wife, the son of the wife, the son of an appointed daughter, the son of a twice-married woman, the damsel's son, the son received with a pregnant bride, the son of hidden origin, the son given, the son purchased, the son self-given, the son made, the deserted son, and the one born on a woman of unknown caste,—are the fifteen sons of a man." Secondly: A text of Vrihaspati: "Of the thirteen sons, enumerated in their order, by Manu, the legitimate son, and appointed daughter, are the cause of lineage." Thirdly: A text [of Manu]: "Sages declare these eleven sons, (the son of the wife, and the rest,) as specified, to the substitutes for the real legitimate son, for the obsequies would fail."—And lastly: A text also of Manu, which declares: "The son of the body, and, the son of the wife, may succeed to the paternal estate: but, the ten other sons, can only succeed in order, to the family duties, and to their share of the inheritance."*

Vrihaspati.

Manu.

Manu.

His argument refuted.

58. Should it be thus argued, by an opponent, we reply,—True! It is established, that there is no contradiction of the number twelve: for, the several enumerations in each authority, are consistent; since in some, particular sons are implied, and in others, expressed.

The gradation of the nephew, as fifth, in the order of inheritance, would be contradicted.

59. And moreover, the assigning in the following text, the fifth place, in the order of succession to the estate of one, who died without male issue, would be contradicted: "The wife, and the daughters, also: both parents, brothers likewise, and their sons."†

That is, if the brother's son though unadopted, were son to his uncle.

A similar objection would apply to the order of performing obsequies.

60. The exposition of this, is thus. If the brother's son, though unadopted, bear filial relation [to his uncle]; the enumerating the brother's son on account of his wanting such relation, in the fifth place, in the order of succession to one dying without male issue, would be contradicted. The same also must be understood, in respect to the right in gradation, to perform the obsequies, as declared in this, and other texts. "The son, the son of a son, the son of a grandson: like these, the offspring of a brother, or, that of a Sapinda also, are born, Oh king! capable of performing obsequies."‡

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* Manu 9, 165. † Yájñavalkya 2, 136. ‡ Vishnu-purána.

But Vishṇu declares the incompetency of certain descriptions of sons, to perform obsequies or succeed to the estate, although filially related.

61. But, is it not deducing a false conclusion, to argue a want of filial relation from not performing the obsequies and succeeding to the estate; for, the son of an unmarried daughter, and the rest, notwithstanding their filiation, are shown by Vishṇu, in this text, to be incompetent to perform obsequies or succeed to the estate. "Exceptionable sons, as the son of an unmarried daughter, a son of concealed origin, one received with a pregnant bride, and a son of a twice-married woman, share neither the funeral oblation, nor the estate."* So also, notwithstanding participation in the obsequies and estate, may be wanting, the filial relation of the brother's son, though unadopted, may be admitted without objection.

Argument of opponent, founded on this circumstance overruled by reference to texts of

Yájñavalkya,

And Atri.

62. Should this be objected: it is erroneous. Participation in the obsequies and estate has been declared to be the result of filial relation, in this passage ("Among these, the next in order is heir, and presents the funeral oblations, on failure of the preceding");† for, otherwise, like the impotent person and the rest, one, who merely bore the semblance of being a son, would be of no use; and in this text, ("By a man destitute of a son only, must the substitute for the same, always be adopted, &c.") an imperative mode of expression, being used, the filial relation of one unadopted, cannot exist.

Of whose text, it cannot be said, that it refers to one other than a brother's son.

63. Nor must it be affirmed that the injunction in question regards those other than the brother's son: for there is no proof of such partial application; and on the other hand, it would be at variance with the instance of the adoption by Vetála of the son of [his brother] Bhairava, contained in a portion [of the

Annotations.

62. Amongst these, &c.] The text of Yájñavalkya, of which the initial part only, is here cited, is completed from the translation of the Mitákshará on inheritance. (v. Colebrooke's translation, Ch. 1, Sect. XI, § 21). The passage quoted in the last paragraph, as from Vishṇu, which is cited in § 27 of the Section noticed, is explained, as merely barring the right of the exceptionable sons in question, to a fourth share, legitimate issue existing: and as not affecting the text of Yájñavalkya, here alluded to, by which any description of son whatever, on default of legitimate issue, may inherit the whole patrimony.

Impotent person and the rest.] Meaning the outcaste, and his issue, one lame and the others, who are excluded from inheritance.

An imperative mode of expression being used.] 'Vidhiprayatyaya' or an affix of injunction, are the terms of the original thus rendered: by these, the injunctive future participle 'Kartavya' (must be adopted) used by Atri, is designated.

* This text is unauthentic: vide note to Colebrooke's translation of the Mitákshará, Chap. 1, Sect. XI § 27.

† Yájñavalkya.

extract from the Kálika-purana, before quoted] commencing, "We will make one son only," and ending "Vetála also affiliated him, as his son."

Besides if the filiation of a nephew, existed without adoption, where of several brothers, some not sons, and others had not, an absurd consequence would result.

64. Moreover, in the case, where, of ten whole brothers, five have each ten sons, and five are wholly destitute of male issue, it would follow, that, the five brothers destitute of male issue, would have each fifty sons; and it would also result, that the fifty sons would severally have ten fathers: thus, there would be a great absurdity.

Which cannot be intended.

65. Nor, would an intended consequence thus result: for, in the passage, ("a substitute for a son must be adopted") unity, ascribed to the object to be adopted, is of definite import: and the singular number, used in the following passage to express severally both the male issue and the father of the same, would be contradicted. "If one among brothers of the whole blood be possessed of male issue, Manu pronounces that they all are fathers of the same, by means of that son."

An argument to the contrary, cannot be drawn from the mention, in a passage noticed, of the 'sons of brothers' in the plural.

66. Neither must it be alleged that because the plurality of brother's sons is mentioned in this passage, ("those who are fathers of male issue, by means of her own sons, and those of brothers, are completely saved."*) many brothers sons, even though unadopted, may be sons of one person: for, from occurring in respectful modes of expression, in which by popular acceptation, the plural number is used, it has an indefinite import: also, the injunctive precept proposed, being accomplished in our opinion, by means of one only, the propounding many would be contrary to sense and law.

Conclusion that of kinsmen, the nephew must be first adopted.

These only inherit out of order from adoption.

67. Hence it is a settled point, that amongst near "sapinda" kinsmen of the same general family, a brother's son only must be affiliated: and therefore, by being adopted [the brother's son, and other kinsmen,] are first in participating in the estate and funeral oblations: but, not being adopted, they hold their respective places [in the order of heirs].

The text of Vishnu reconciled without contradiction.

68. The text, too, of Vishnu, (§ 61) refers to where, any son prior in the order of enumeration, may exist. Thus there is no contradiction whatever.

Annotations.

66. Also the injunctive precept proposed.] That enjoining the necessity of adoption as conveyed in Atri's text.

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* From the extract from the Kálika-purána before cited v. supra, § 45.

69. But, this being the case: the filial relation of one unadopted, declared in the following text also, would not subsist. "If among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that child, to be mothers of male issue."* And this would not be an intended consequence; for, it would be contrary to custom, and at variance with the appellation of mother, occasioned merely by being the wife of the father, as expressed in this passage. "The wives of the father, are all mothers."

Objection, that in the same manner, as in the case of the brother's son, the filial relation, of the unadopted son of a rival wife, to his step-mother, as declared by Manu, would not exist.

70. Should this be objected, it is wrong: for the son of a rival wife, originating immediately from portions of the husband, may, though unadopted, bear the relation of son [to another wife,] and the text [of Manu] intends a restriction, [as to substitutes, not so circumstanced] as has already been declared.† But since the brother's son, is not connected, by containing portions of either the husband or wife even, he does not unadopted, bear filial relation.

Overruled.

71. "If there are several brothers, the sons of one man by the same mother, on a son being born to one even of them, all of them are declared to be fathers of male issue. The same rule is also ordained in respect to many wives of the same person: if one brings forth a son, he is the presenter of the funeral cake to the whole." As for the application by analogy of the rule regarding the brother's son, to that of the rival wife, declared by Vrihaspati, in this text: that is propounded as meaning, [the son of the rival wife] to be a subsidiary son, not as intending his affiliation: for, his filial relation [to his step-mother] is established from his proceeding from portions of her husband. Also, she being a substitute, being established, from proceeding partially from portions [of the pair]; the text [of Manu] intends a restriction, [as to substitutes, not so circumstanced,] as already has been declared.

The analogy declared by Vrihaspati, between the cases of the brother's son, and that of the rival wife, consistently explained; so as not to affect the doctrine advanced.

Annotations.

70. And the text [of Manu,] intends a restriction, &c., &c.] The author's doctrine, advanced in Sect. I, § 34. is, that, any one connected to the husband and wife, by containing portions of either, may of right be a substitute; and that, the text of Manu, specifying substitutes, is restrictive only, in respect to those not so connected: accordingly, he here introduces the same obscure sentence, intending that effect, with a view of anticipating any objection, as to the son of the rival wife, being a subsidiary son, grounded on his not being enumerated by Manu.

* Manu 9, 183.

† Vide supra, Sect. I, § 34.

72. Either portion [of the passage from Vṙhaspati,] has been made clear, by Devasvámí, in this text. In both, even, [it is meant, that,] another substitute must not be adopted."—And this text is thus interpreted in the Chandriká—" 'In both, even'—in the two texts commencing, ("If there are several brothers, the sons of one man, &c.") [it is meant that,] the son of a brother, and that of a rival wife, being anyhow capable of being substitutes, another must not be adopted, as a substitute."

' Devasvámí confirms.

The Chandriká where his text is explained cited.

73. Vijñaneçvara also thus explains the text of Manu (§ 29): [This text] is intended to forbid the adoption of others if a brother's son can possibly be adopted: it is not intended to declare him son of his uncle: for that is inconsistent with the subsequent text: "Brothers likewise, and their sons, &c. &c."*

Vijñaneçvara's exposition of Manu's text. (§ 29.)

74. If no brother's son exist, another even, being the nearest relative, according to the mode mentioned [must be adopted.] Conformably Çaunakha [continues]†. "Of Kshatriyas, in their own class positively: and [on default of a sapiṇḍa kinsmen] even in the general family, following in the same primitive spiritual guide (Guru): of Vaiçyas, from amongst those of the Vaiçya class (Vaiçya-játeshu); of Çúdras, from amongst those of the Çúdra class. Of all, and the tribes likewise, [in their own] classes only: and not otherwise. But a daughter's son, and a sister's son, are affiliated by Çúdras. For the three superior tribes, a sister's son, is no where [mentioned as] a son."

On default of the nephew, the nearest relative must be adopted; as intimated by Çaunakha.

75. "In their own class." In the Kshatriya tribe. Notwithstanding 'class' (játi), being used in its general sense, propinquity as before, here likewise, constitutes a restrictive condition; on account of the text of Vasishṭha: "a person being about to adopt a son, should take an unremote kinsman, &c."

Though 'class' is used by Çaunakha in the general propinquity is a condition, by reason of the text Vasishṭha.

76. On default of a sapiṇḍa kinsmen, "and even in the general family, following the same primitive spiritual guide.—" Since there are no distinct and peculiar general families, of the [primeval] Kshatriyas; the primitive spiritual guide is mentioned, [to particularize the class, from which, the adoption is to be made.]

Import of the passage "and even in the general family, &c." shown.

Annotations.

76. Since there are no distinct and peculiar general families of the [primeval] [Kshatriyas]. The general families of Kshatriyas and Vaiçyas, are distinguished by the

* V. Mitákshará on inheritance. Colebrooke's translation, Ch. 1, Sect. XI, § 36.

† This passage from Çaunaka, is the continuation of that cited in § 2.

From which it appears, on defect of a 'sapinda,' one of the same general family, is ordained; to whom, the condition of equality of class, equally applies.

77. Accordingly, an account of his more remote connection, on failure of the "sapinda" kinsman, one, belonging to the same general family, is ordained. In respect to him also, the clause "In their own class, &c." is likewise applicable; on account of the conclusion, of the passage "of all, &c." And hence a near or distant relation of a different class is precluded [from being adopted.]

Çaunaka's terms Vaiçya-játeshu, explained.

78. 'Vaiçya-játeshu'] this must be rendered,—from amongst those of the Vaiçya class,—as if, 'játishu' had been used: for 'játa' or 'játi [of which the words are several inflexions, are recited in the dictionary, as synonims, signifying, 'class or sort.'

In respect to the Vaiçya, the condition of propinquity, and the clause, as to the general family following the same 'Guru,' are equally applicable.

79. Here also, although the specification is general, propinquity as before, constitutes a restrictive rule. The clause too, ("and even in the general family, following the same primitive spiritual guide,") is here likewise understood; on account of the text, commencing "[He specifies] the general families of Kshatriyas, and Vaiçyas, as distinguished by following the same primitive spiritual guide: and because, the passage, the initial words of which, are "who are adopted from those of his own general family, &c. &c."* is common to the three tribes. It is equally the case, in this instance also, that, on default of a 'sapinda' kinsman, one of the general family, following the same primitive spiritual guide, [is to be adopted.]

Annotations.

primitive saint, or patriarch hereditarily acknowledged, in the family. This is not the case with Bráhmanas. The gotra, or general family of whom, is determined by lineal descent, from some particular saint. Çúdras again are all supposed to belong to the gotra of Káçyapa, the common progenitor of the four tribes.

78. Vaiçya-játeshu] These terms occurring in the original, might also be rendered 'amongst those sprung from a Vaiçya:' accordingly, it is here the object of the author, to restrict them, to their other construction, viz., "In Vaiçya classes," which he prefers. The Sanskrit reader will observe, that a literal translation has not, [been] nor could not well be attempted here.

79. The text commencing, &c.] Not having met with this text in its complete state, the Translator offers with diffidence, the mode, in which, the initial words, of the original, are rendered. These occur in the Mitákshará, where they are cited, under the name of Açvaláyana, the author of a work entitled the Grhya-sútra.—The same text is noticed in the Dattaka-Chandriká, where the additional word 'probriniti, "He specifies" occurs.

* Vriddha Gautama, vide supra, § 4. In the original, those cited, are the initial words of the text.

Amongst Çúdras propinquity is a condition, but the clause regarding the general family of the same Guru, does not apply.

Their tribe in general is the order from which the selection is to be made.

80. 'From amongst those of the Çúdra class.' Here also propinquity as before, [constitutes a restriction;] and the clause, ("and even in general family following the same primitive spiritual guide,") does not here apply: since, [amongst Çúdras] a general family, distinguished by following the same primitive spiritual guide, is not ordained. Therefore it follows, that the Çúdra class, in the general, [is the order from which the adoption is to be made.]

The same is intimated in the Bráhma-purána.

81. The same is declared in the Bráhma-purána.—"In fact, for Çúdras, gaining their livelihood by servitude, living on another's bread, whose bodies depend on another, there is not a son, from any order whatever, [but their own tribe]: because a slave only is produced from a male slave and a female slave."

From which the import of the text cited is explained.

82. On account of the superiority of those of the three first tribes, and of those born in their direct order; and of the inferiority, of those born in the inverse order, a son cannot be adopted, from any order whatever, [by Çúdras, but their own tribe]. A Çúdra only, therefore, must be affiliated; for a slave is produced from slave parents.

Objection, that the passage commencing, 'of Kshatriyas;' should not have been propounded.

83. But the three sentences regarding the 'Kshatriyas' and the rest, (§ 74) should not have been propounded; because their import is obtained from the passage preceding (v. § 2): and even if propounded, there is tautology in the part commencing "of all, &c."

Refuted.

84. This if objected, is wrong; because by the terms 'Kshatriya' and the rest, the inclusion of the Múrdhávasikta and other mixed classes regulated by the same rules as the Kshatriya and the rest, is meant: for, a text of Çankha expresses:—"one procreated,—on a female Kshatriya by a Bráhmana, is a Kshatriya even: on a Vaiçya woman, by a Kshatriya, is a Vaiçya even: by a Vaiçya on a female Çúdra, is even a Çúdra."

The phrase 'in their own class' shews that, a Múrdhávasikta, or one of any mixed class, may not be adopted by one of the tribe with which he ranks.

85. 'In their own class.' This is to show that, though the same rules apply to the 'Múrdhávasikta,' and other mixed classes, as to the Kshatriya and the rest; still those do not become sons to a Kshatriya, and the rest, on account of the indication, of direct order, in this text. "Three wives in the direct order of the tribes, &c., &c."

Annotations.

85. On account of the indication of direct order in this text.] The text, of which the initial words only are cited, is the following of Yájñavalkya. "Three wives in the

The sentence, 'of all, &c. is pertinent.

86. Nor, is there any tautology in this sentence, " of all, &c. :" for this part of the text: " of all, &c." by reciting a restriction, as to their own classes, in respect to the tribes, and those born in the direct order of the same, is pertinent, in indicating, that, that does not apply to those, born in the inverse order.

'Of all' is used, to include those born in the direct order of the tribes, who would not otherwise be included by the term 'all.'

It is not an epithet of tribes.

87. The expression 'of all' implies in fact this. From the cogency in the specification of the word 'tribes,' the restriction to their own class, would apply to the tribes only: not to those, born in their direct order. To include these the word 'all' is used. Now, they are included, because they are regulated by the same rules, as the tribes. Nor is the term, an epithet of tribes; for the conjunction 'and' would be insignificant.

Conclusion.

88. And therefore, the restriction is,—' of the tribes, and those born in the direct order of the same, in [their own] classes only.' 'Not otherwise'—meaning—not amongst others, born in the inverse order of the tribes.

Objection that the part commencing 'of all' may possibly be an exception to the preceding part.

89. But why should not this part, [commencing 'of all, &c.'] be considered, as an exception to the rule, as to propinquity, inferred from the preceding passage [in § 2]? Should it be replied, because, it would be repugnant to the text of Vasishtha ("a person being about to adopt, &c."): the argument is wrong; for, the result, deduced from that text, is, that, it is identical in its import with the passage [in question,] regarding Bráhmaṇas.

Refuted.

90. Such objection, if made, is inaccurate: for, were the passage in question, such exception; the rule, founded on ancient practice, which makes propinquity as recognized by popular acceptation and in holy writ, a condition, would be contradicted: no advantage would result: it would be repugnant to

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Annotation.

direct order of the tribes, two, and one, are, for a Bráhmaṇa, Kshatriya and Vaiçya respectively. For one born a Çúdra, a woman of his own tribe." The argument of the author, here used, requires illustration. A son begotten by a man of superior tribe, on a woman of inferior tribe, is of his mother's class, and technically called 'anupurvaja' and 'anulomaja :' that is,—one of a mixed class, born in the direct order of the tribes. Such issue is of several descriptions. For instance, the Múrdhávasikta or offspring of parents of the Bráhmaṇa and Kshatriya tribes. Though considered however, as of his mother's tribe, such son, may not be adopted by a Kshatriya. It is a maxim, that a man, must only affiliate, one of his own class, of whom he might have been the natural father. Now the Múrdhávasikta, is born in the direct order of the tribes, being the issue of the union of a Bráhmaṇa, with a female Kshatriya; and not that of a Kshatriya with a female Bráhmaṇa, which could not take place; as it would be in the inverse order of the tribes.

the context: and lastly were an exception, as to propinquity in the general, meant even, by this passage, the exception as to particular relationship, conveyed in this part of the text, ('But a daughter's son, and a sister's son, &c.') would be inconsistent. Therefore, the interpretation only, as given, is pertinent.

The daughter's son, and sister's son, are excepted, from the three first tribes by the part "but a daughter's son, &c."

91. This part of the text, ("but a daughter's son, &c.") propounds an exception, as to those of the three first tribes, with respect to the daughter's son, and sister's son, inferred from the mention of propinquity in the general.

This construction elucidated. It is supported to by the part subjoined as a reason.

92. Since, (the particle 'but,' having an exclusive import,) a restriction 'by Çúdras only,' is conveyed; those of the three first tribes are excluded. On this point the author subjoins a reason: "For the three superior tribes, &c. &c."

Conclusion.

93. Since the filial relation of a sister's son to one of the three first tribes, is not exhibited in any authority whatever, the passage is relative only to Çúdras. This is the meaning of the whole.

'Sister's son' is used, in the reason, indefinitely: otherwise, that term, or 'daughter's son,' in the preceding sentence would be unmeaning.

94. The expression, 'a sister's son' is of indefinite import, in the [part subjoined as a] reason; for, [otherwise] it would follow, that it were therein an unmeaning term: or were it of definite import, one portion [of the preceding sentence, viz. 'A daughter's son'] would be void of sense.

An argument used, to show that the daughter's son and that of the sister, refer to Çúdras only, identical with that applied in a parallel case.

95. The daughter's son, and that of the sister, refer to the Çúdra tribe: for, in no other authority, do they relate to those of the three first tribes; an argument, the same as that, used in the question, as to drinking spirits, and so forth. Hence, it is not accurate that these two refer to those of the three first tribes.

Annotations.

94. It would follow that it were therein an unmeaning term.] Literally epithet; for, in the original of the passage of Çaunaka, alluded to, the single derivative word 'bhágineyah' (sister's son,) may be construed as an epithet of 'Sutah' (son) there occurring. The idiom of the English language requires that these terms should be disjoined in the translation: that is, that 'Sutah' should be construed by itself, as the predicate of the sentence.

95. In the question as to drinking spirits, and so forth.] The drinking spirits is declared lawful for Çúdras. But not so by any authority, for those of the three first tribes. Therefore it is argued that these are meant to be excluded.

Objection that, by a literal construction, the sister's son, and not the daughter's, is excepted to the three tribes.

96. Next it may be alleged, that, both passages by being construed in a literal manner only, are demonstrative of their several subjects, but not so by being construed from inference. Consequently, it is the sister's son alone, that does not refer to the three tribes: not the daughter's son.

Overruled; as the text would be split, and an option of the daughter's son, accrue to those tribes.

97. This is also wrong. for a splitting of the text would result; and an option to those of the three first tribes, in respect to the daughter's son, follow. since by being an unremote kinsman, he would be inferred [as eligible] and interdicted [as such] by the restriction to Çúdras only.

The same option otherwise deduced.

98. Or thus. By the restriction to Çúdras only, a prohibition of the daughter's son, in respect to those of the three first tribes, would be established. And by the restriction that a sister's son only may not be [adopted] by those of the three first tribes, a sanction of the daughter's son would be obtained. Thus there would be an option.

If a literal mode of construction be adopted: in the first passage, there must be a restriction, as to, the object or agent, as here illustrated.

99. Besides, if [the two passages in question,] are to be construed with reference merely to their verbal import, in the first passage, there would be either a restriction [as to the object of adoption], or one in respect to the agent (parisank'hya). In what does the one, and in what the other consist? 'By Çúdras, a daughter's son and a sister's son only [may be adopted]'.—This is a restriction [as to the object; required,] because [otherwise,] the daughter's son, and the other, would be inferrible, from one portion [of the general text],—and every relative commencing with the brother's son from another. 'By Çúdras, only, a daughter's son, and a sister's son [may be adopted].' This is a restriction in respect to the agent; [which would be required,] as the daughter's son, and the other might be inferred [as eligible], to the four tribes collectively.

If the first many objections would result.

100. If restriction, as to the object of adoption, be meant, then there would be, a contravention of the whole law ordaining the brother's son and the rest, [as eligible for adoption]: the word 'class' in this passage ("of all, and the tribes likewise in [their own] classes only: and not otherwise") as signifying the daughter's son and the sister's son, would be contracted in its import: and it would follow, where no daughter's son, or sister's son existed, the affiliation of a son could not take place.

So also.

101. But, supposing a restriction in respect to those who may be the agents, meant; then, by the mere restriction to Çúdras only, the interdiction of the sons in ques-

If the second. tion, the three first tribes, being conclusively established, it would follow that the passage commencing, ("for the three superior tribes, &c.") as again prohibiting the same, were unmeaning.

102. Therefore, by a construction deduced from inference only, is the interpretation of the two passages correct. And moreover, a verbal construction founded on revealed law, is more vexatious, than a construction deduced by the help of inference, and grounded on reasoning: and revealed law, being taken [as the basis of the construction], two revelations must be assumed. Now ratiocination being the ground-work, this would not be the case. Therefore, the apparent reason presenting itself, is the demonstrative means.

Conclusion, that the mode of construction, of the two passages, in question, must be, from inference only.

103. Although there is another reading,—"The daughter's son, and the sister's son, are declared to be sons of Çúdras"* : still [both] are identical in their import, since the passage, commencing.—"For the three superior tribes, &c."—is introduced, to manifest, that a restriction even, is intended, for obviating a doubt, whether, "of Çúdras only,"—or "of Çúdras also,"—were meant.

Another reading of the first of these passages noticed: which equally admits of a restriction being meant.

104. Now, that a restriction is meant, thus [appears]. Were there no restriction, in respect to the act of affiliation, the object of which, is the daughter's son and sister's son, the whole four tribes might be inferred, as the agents therein. [But] from the consequent restriction to Çúdras, it is established, that 'of Çúdras only' is meant.

Which is thus intended.

Annotations.

102. And moreover a verbal construction founded on revealed law, &c.] The following is offered as an illustration of this part. If the two passages in question, (viz. those which conclude the text of Çaunaka) be construed verbally, they must be regarded as unconnected, and declaratory of distinct positions, which can only be considered true, by assuming them, to be founded on revealed law. And, as the passages are distinct, two revelations or passages of that law must be assumed. In construing however, these passages liberally, by the help of inference, the author understands their import to be thus: 'A daughter's son and a sister's son are adopted by Çudras only.' For in no authority are such sons mentioned as eligible to the three first tribes: as they are to Çúdras.' Thus, without referring to revealed law, he understands the position in the first passage, demonstrated by an argument in the second: and this seems, to be what he intends, when he says: "Therefore the apparent reason, &c. &c."

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* Vide infra, Sec. V, § 18.

105. And accordingly, the term 'sister's son' is inclusive even, of the daughter's son also; for, otherwise the restriction, that the daughter's son, and sisters's son refer to Çúdras, would not be attained: or if attained, an ception as to the daughter's son, in respect to those of the three first tribes, would result; as has been already noticed.

The term "sister's son" is inclusive, of the daughter's son, otherwise objections would exist.

106. If this is the case, then, let the non-relation merely, of the sister's son, to those of the three first tribes, be proved by the daughter's son, and sister's son, referring to Çúdras: should this be alleged, it would be wrong. For, as such position would be established, by this reason alone,—'from referring to Çúdras,'— the mentioning the daughter's son, and sister's son, would be unmeaning: and if a loose mode of expression must be assumed, the use of the term 'sister's son' only, without specific meaning, is less vexatious, than the use of both terms, in an indefinite import. Consequently, that only, which has been propounded, is accurate.

A mode of reconciling the construction of the passages in question, from inference, without involving what is objected in the last §, refuted.

107. Çákala has clearly laid down the above points: "Let one of a regenerate tribe destitute of male issue, on that account, adopted as a son, the offspring of a sapiṇḍa relation particularly: or also next to him, one born in the same general family: if such exist not, let him adopt one born in another family: except a daughter's son, a sister's son and the son of the mother's sister."

A text of Çákala, cited, as confirming the doctrine advanced.

108. By this it is clearly established, that the expression 'sister's son' [in the last sentence of Çaunaka's text § 74], is illustrative of the daughter's son, and mother's sister's son, and this is proper, for prohibited connection is common to all three. To enlarge would be useless.

It appears from which, the term sister's son is illustrative of the mother's sister's son also.

Annotations.

106. If this is the case, then let, &c.] In an enlarged state, the following appears to be the objection, which the author here anticipates. If the two last passages of Çaunaka's text, are to be construed only, from inference and reasoning: and if the restriction in respect to Çúdras, would not be attained, unless the term 'sister's son' were inclusive of 'daughter's son;' then, instead of the last of these passages, being considered, as containing the reason or argument demonstrative of the position declared in the first, let the first be regarded as the reason, establishing the position in the last. or, (in the words of the text,) "let the non-relation, &c." In this case, the passages in question, would be still interpreted from inference, and what is objected in the preceding paragraph, would not apply.—The author anticipates, and refutes this mode of eluding, or retorting his arguments.

106. The mentioning the daughter's son, and sister's son.] In the first of the two last passages of Çaunaka's text, that is, in that, which is here proposed to be assigned as a reason

107. One of a regenerate tribe.] That is of any tribe other than the Çúdra.

108. For prohibited connection, &c.] What is here meant is explained in Sect. IV, § 18.

SECTION III.

Rule, should one different by class be illegally adopted.

Should one different by class, be illegally adopted, what is to be done, is shown by Çaunaka.

1. It has been declared that, one different by class, must not be adopted: should this rule be transgressed, what would be the case? In reply to this question, Çaunaka says: "If one of a different class, should however, in any instance, have been adopted as a son, he should not make him the participator of a share. This is the doctrine of Çaunaka."

Import of the expression 'different by class.'

2. The meaning is:—should one be adopted, according to form even, whose class is different,—being superior, or inferior, in respect to the adopter.

Force of the term 'share.'

3. Exclusion, from participation in the whole estate, is implied, from the cogency of the term 'share'; [which intends,] 'a share of the estate': and on account of,—a text of Kátyáyana, which expresses,—"But, if they be of a different class, they are entitled to food and raiment only,"—and a portion from Yájñavalkya, commencing, "amongst these, the next in order is heir, and presents funeral oblations, &c." and ending "this law is propounded by me, in regard to sons, equal by class."

SECTION IV.

The qualification of the person to be adopted.—The gift of a son, under what circumstances and by whom proper.—The son of a twice married woman, and slave's son specially referred to.

Çaunaka intimates the description of person, to be adopted.

1. Next, in reply to the question, as to the qualification of the person to be affiliated, Çaunaka declares: "By no man, having an only son (eka-putra), is the gift of a son, to be ever made. By a man having several sons (bahu-putra), such gift, is to be made, on account of difficulty (prayatnatas)."

2. He, who has one son only, is 'eka-putra,' or one having an only son: by such a one, the gift of that son must not be made: for a text of Vasishtha declares, "an only son, let no man give, &c."

His expression 'eka-putra' explained.

3. Since, the word 'gift,' means the establishing another's property after the previous extinction of one's own: and another's property cannot be established without his acceptance: the author (Çaunaka) implies this also, in his text in question. Therefore, a prohibition likewise against acceptance is established by that very text. Accordingly Vasishtha: "an only son, let no man give or accept, &c. &c."

By prohibiting the gift of an only son, Çaunaka bars also the receiving such, in adoption as declared by Vasishtha.

4. To this he subjoins a reason, "For, he is [destined] to continue the line of his ancestors." His being intended for lineage, being thus ordained: in the gift of an only son, the offence of extinction of lineage is implied. Now, this is incurred by both the giver and adopter also. For the [reason in question,] is subjoined, after both [verbs: viz. 'give' and 'accept.']

Who, assigns a reason, from which, it is argued, that, both the giver, and adopter of an only son, incur an offence.

5. As for another text of recorded law,—"In instruction, the father is absolute over a son and sons' wives: but not so with respect to the son, in sale and gift," and the text of the Holy Saint: "except a wife and a son, other things may be given:"—these texts regard the case of an only son.

Other texts, which prohibit the gift of a son, refer to the case, of an only son, not to where there are several.

6. ['Ever'] in a time of calamity: accordingly, Nárada says: "A deposit, a son, and a wife, the whole estate of a man, who has issue living; the sages have declared unalienable, even by a man oppressed by grievous calamities: although the property be solely that of the man himself." This text also, regards an only son; for it is declaratory of the same import as the texts of Çaunaka and Vasishtha.

'Ever' used by Çaunaka, indicates even, during a calamity: as intimated by, Nárada,

Whose text refers to an only son.

7. Next, the author replies to the question,—By whom is a son to be given? 'By one having several sons.' He who has several sons is 'bahu-putra,' or one having several sons.'

Çaunaka resolves a question, in declaring that a son is to be given, by 'one having several sons.'

Annotations.

2. 'Eka-putra,' or one having an only son.] The compound, 'eka-putra' is capable of being variously rendered: The interpretation of the author restricts it to the sense in which it is here used.

7. By whom is a son to be given?] This is one of the topics specified in the commencement of the work.

By which the gift of one of two sons, (which might otherwise be inferred) is prohibited: and this is supported by an extract from the Bhárata.

8. "By no man having an only son." From this prohibition, the gift, by one having two sons, being inferrible: this part of the text ("By one, having several sons, &c.") is subjoined, to prohibit the same, by one having two sons also. For, the speech of Çántanu, to Bhishma, expresses: "He who has only one son, is considered by me, as one destitute of male issue, oh! descendant of Kuru. One, who has only one eye is as one destitute of both: should his only eye be lost, he is absolutely blind."

The masculine gender, being used, a woman must not give a son, as declared also by Vasishtha.

9. "By a man having several sons." Since, the masculine gender is here used, the gift of a son, by a woman, is prohibited. Accordingly, Vasishtha says: "Let not a woman either give or accept a son;"—and [her] independency is not ordained.

She may with her husband's assent.

As authorised by Vasishtha.

10. With the husband's assent, a woman also is competent. Accordingly, Vasishtha adds: "unless with the assent of her husband."

Two passages seemingly implying, the equality of the wife, consistently explained.

11. "Whom, his mother, or his father, gives (dadyát)*"—"his mother or father give (dadyátam)."† As for what is contained in these passages, as intimating the equality of the father and mother: that is merely, with reference to the assent of the husband.

In a season of calamity, the widow, though the assent of her husband, is impossible, may give her son: as confirmed by a case in point.

12. It must not be argued that thus the gift of her son by a widow, though during a season of calamity, could not take place, on account of the impossibility of the assent of her husband; analogous [to her incapacity] to adopt. For, by referring to the instance recorded of Gálava, such gift may be inferred as legal, and the singular number, indicating independance of another, is used.

Annotations.

9. And [her] independence is not ordained.] In rendering this passage from a variety of readings, which occur, and constructions, which might be adopted, those which appeared to agree best with the context, have been selected.—Two or three manuscripts referred to, concur in reading 'nairapeksha-sravanách-cha.' This however, is not so easily rendered with general consistence, as the reading of the third manuscript, which has been adopted; viz., 'nairapeksh'ásravanách-cha. To the former of these readings, the printed copy adds iti-bhava. This confirms as proper the construction of the sentence with what precedes, rather than what follows it; though thereby an inaccuracy of style (by no means however to him uncommon) must be imputed to the author. If the first of the readings noticed be preferred, the translation must be thus: "And [besides in the text of Çaunaka, in question, the man] is mentioned independently of and without reference to his wife."

12. [Instance recorded of Gálava.] The translator has not yet succeeded, in discovering the circumstances here alluded to; indeed the terms of the original, 'Gálaviya-

* Part of a text of Yájñavalkya, 2, 152. † Part of a text of Manu, 9, 168.

13. The husband, singly even and independent of his wife, is competent to give a son: for in the two passages cited (in § 11) the father is mentioned singly and unassociated with the mother, and there is this reason of Baudháyana found: "From the predominance of the virile seed, sons are regarded even, as not produced of the womb." In the Bhárata also, [a reason is found.] "The mother, is the fosterer: the son is of the father: he is [as it were] that very person, by whom produce." A passage of revealed law, is likewise [confirmatory]. "His-self is truly born a son."

The husband may give his son, independent of the wife: argued from passage, cited in § 11.

Of Baudháyana. The Bhárata. And Vedas.

14. And, from the intimation of the agency of both together, by the verb 'give' in the dual in Manu's text, the competency of both united is principal. Accordingly Vasishtha says: "Man, produced from virile seed and uterine blood, proceeds from his father and mother, as an effect from it's cause, therefore, his father and mother have power, to give, to sell, or to abandon their sons." Baudháyana also. "For, the connection to the father and mother, is equal."

Implied in the last of the passages, cited (in § 11) that, the power to give, of both united, is principal: as may be argued from passages of Vasishtha and Baudháyana.

15. Conformably, in this passage, ("the mother or father given") Manu, intending,—from her dependance on the assent of her husband, the inferiority of the mother [as the agent, in the gift of a son];—the mediocrity of the husband, on account of his independance of the wife;—and the pre-eminence of both united, from their being equally parents,—propounds each position in order last, according as he prefers it, to that preceding.

"The mother or father give." In this part of his text, (§ 11), Manu propounds three positions.

16. It must not be argued that this is merely a single sentence, on account of the only verb being used in the dual number: for the disjunction in the middle [by the particle, 'or'] would be inconsistent. Therefore the passage in question comprises three positions.

Objection refuted.

Annotations.

linga,' might equally be understood, as signifying 'an instance recorded by Gálava. It should be observed, that the printed copy reads 'mánavíya-linga,' which may be rendered 'the text of Manu': and if this reading be correct, that cited in § 11 and § 19 wherein the expression 'during distress' occurs, is alluded to. Three distinct copies referred to by the translator, concur in the reading adopted by him: for which reason he regards the other as a substitution, made by some pandit, to obviate the difficulty on the reading adopted.

The singular number, indicating independance of another is used.] In the passages quoted in § 11, 'mother' is mentioned in the singular number, and (as it were,) independant of the father.

14. Therefore his father and mother, &c.] In the original, the compound of conjunction "Mátápitarau" occurs, indicating the association of the father, and mother.

The text of Yájña-valkya, is confirmatory.

17. Accordingly, the chief of saints, in this passage, "whom his mother or his father gives," has used the verb in the singular number even, though referring to each [nominative case.]

In Çaunaka's text (§ 2) 'on account of difficulty'; is assigned as the reason.

Explanation of the term.

18. On the subject proposed, the author [Çaunaka] assigns a reason,—"on account of difficulty (prayatnatas)." That time in which there is great trouble is [a time of] difficulty that is, a season of calamity.

Conclusion, that the gift of a son, must be only made, during distress: as declared by Kátyáyana. Whose text alludes, to sons, and wives.

Manu also.

19. Hence, the meaning is this;—a gift of a son, is to be made in a time of calamity only: not otherwise. Thus Kátyáyana says: "But during a season of distress, the gift or sale even, may be made; otherwise he must not attempt the same. This is the injunction of the holy institutes."* From the context,—"of sons and wives," is understood. Manu also: "Whom his mother or father give during distress, confirming the gift with water."

In the gift of a son, during no distress, a sin is incurred.

20. "During distress."] In a famine and so forth: should the gift be made, no distress existing, the giver commits a sin, on account of the prohibition, "otherwise he must not attempt the same."

Other construction of Çaunaka's term 'difficulty' noticed.

Confirmed by a passage of Atri.

And an interpretation by Apararka, and the Chandrika.

21. Or, the term 'prayatnatas' may signify—'on account of difficulty of the adopter.' During distress; that is,—when destitute of male issue: on account of the text of Atri, commencing,—"By a man destitute of a son only, must, a substitute for the same, always be adopted, &c."†: and it is thus interpreted, even by Apararka, and in the Chandriká.‡ "'During distress'—that is,—the adopter having no son."

Another special rule in the Kálika-purána.

22. Another special rule, is propounded, in the Kálika-purána. "Sons given, and the rest though sprung from the seed of another, yet being duly initiated under his own family name, become sons. O Lord of the earth, a son having been initiated under the family name

Annotations.

22. Another special rule, is propounded in the Kálika-purána.] This passage from the Kálika-purána down to 'sacrifice for male issue,' is inserted in the following note, by Mr. Colebrooke, in his translation of the Mitákshará on inheritance, Chap. I, Sect. XI, § 13.—"Raghunandana in the Udváha-tatva, has quoted a passage from the

* Before cited with a variation in the reading: v. Sect. 1, §

† V. Supra Note to Sect. 1, § 63. ‡ V. Supra Sect. 1, § 7.

of his father, unto the ceremony of tonsure inclusive, does not become the son of another man (anyatas). The ceremony of tonsure and other rites (Chudádya) of initiation, being indeed performed, under his own family name, sons given, and the rest may be considered as issue: else, they are termed slaves. After their fifth year, O king, sons, given, and the rest are not sons. [But] having taken a boy five years old, the adopter should first perform the sacrifice for male issue. But, the son of a twice-married woman, immediately on being born, he should duly take as a son. Having performed positively (vai) for such, immediately on being born, the burnt sacrifice for the son of a twice-married woman, the man should complete every initiatory rite, the ceremony for a male born (játakarma) and the rest. The burnt sacrifice for the son of a twice-married woman, being completed, from these (tatas) a son of that description, is filially related."

Exposition of the import of the passage in the extract commencing "son given, and the rest."

23. The meaning is,—although sprung from the seed of another, sons given, and the rest, when 'duly initiated under his own family name,' (that is, by the adopter, according to the form prescribed by his own code, under the family name of himself,) into the different rites, commencing with that for a male born, then become sons of the adoptive parent, not otherwise.

Annotations.

Kálika-purána, which with the text of Vasishtha* constitutes the ground-work of the law of adoption, as received by his followers. They construe the passage, as an unqualified prohibition of the adoption of a youth or child, whose age exceeds five years, and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted, as a rigid maxim by writers in other schools of law; and the authenticity of the passage itself, is contested by some, and particularly by the author of the Vyavahára-mayúkha, who observes truly, that it is wanting in many copies of the Kálika-purána, others, allowing the text to be genuine, explain it, in a sense more consonant to the general practice, which permits the adoption of a relation, if not, of a stranger more advanced both in age and in progress of initiation. The following version of the passage conforms with the interpretation of it given by Nanda Pandita, in the Dattaka-Mímánsá."

23. The different rites commencing with that for a male born.] These are specified, in the following note of Mr. Colebrooke, in his translation of the Digest, on text 134, Chap. 111, Book 5: "By these eight ceremonies I understand. 1st, Játakarma; a ceremony ordained, on the birth of a male, before the section of the navel string, and which consists in making him taste clarified butter, out of a golden spoon. 2d, Námakarana; ceremony on giving a name, performed on the tenth day after birth; or on the eleventh, twelfth or even the hundred and first day. 3d, Nishkrámana; carrying the child out of the house to see the moon, on the third lunar day of the third light fortnight from his birth; or to see the sun in the third or fourth month. 4th, Annapráçana; feeding the child with rice, in the sixth or eighth month, or when he has cut teeth. 5th, Chúlákarana; the ceremony of tonsure, performed in the second or third year after birth. 6th, Upanayana; investiture with the marks of the class, performed in the eighth year from the conception of a Bráhmana; but it may be anticipated in the fifth,

* Vasishtha 15, 1, 7—the same cited in this work in Sect. v, § 31.

Confirmed by Vasishtha.

24. Vasishtha declares this,—"and a given son, even sprung from one following a different branch of the Vedas, being initiated [by the adopter], under his own family name, according to the form prescribed in his own branch of the Vedas, is a follower of the same branch."

Import of the term 'rest,' shewn by reference to a preceding part in the Kálika-purána.

Which directs that on failure of each preceding, the son next in order, successively shall be invested with filial right.

Certain exceptions in the case of empire.

25. "The son given, and the rest." By the term "rest," here used, the son made, and the others, are included; on account of this part which preceded [in the Kálika-purána.] "The legitimate son, the son of the wife, the son given, the son made, the son of concealed birth, and the son rejected, take shares of the heritage. The son of an unmarried girl, the son of a pregnant bride, the son bought, the son by a twice-married woman, the son self-given, and the slave's son; these six are contemptible as sons: on failure of the first in order respectively, let him invest the next with filial rights. But let him not appoint to the empire, the son of a twice-married woman, nor a son self-given, nor one born of a female slave."

To which, those excepted, under no circumstances can succeed.

Their non-succession was before generally declared in a part preceding.

26. The non-appointment to empire of the son of the twice-married woman, and the other two, which is directed in the latter part of this quotation, holds, even on default of any other son besides the legitimate son. For this part of the passage is subjoined as an exception to the preceding part, ("on failure of the first would be respectively, &c.") and their non-succession to the empire, should a legitimate son exist, was declared in this preceding passage.—"A legitimate son existing, let not the king invest in the empire, the wife's son, and the rest: [nor] cause to be completed [through such sons] the solemnities for his forefathers."

Annotations.

or be delayed to the sixteenth year. 7th, Sávitrí; ceremony of investiture hallowed by the Gayatrí, which must not be delayed for a Bráhmana, beyond the sixteenth year: it should be performed in the fourth day after the first investiture. 8th, Samávarttana ceremony on the return of the student from his preceptor's house. The whole number or ceremonies, called Sanskára, as expiating the sinful taint contracted in the mother's womb, and as effecting regeneration, in other words, as perfecting the class of a twice-born man are ten. To the eight ceremonies now enumerated, must be therefore added the ceremony which precedes conception (Garbhádhána,) and marriage, which is the last of these sacraments. Rituals contain other ceremonies, two of which are mentioned in the text and in the preceding note, but these are not essential."—Allusion is made to the punsavana or ceremony to obtain male issue, performed at the expiration of the third months of pregnancy, and the Símantonnayana performed in the 4th, 6th, or 8th months of the first pregnancy. This rite consists in combing the wife's tresses and need only be performed once.

27. The meaning is,—A legitimate son existing, let him not invest with empire the son of the wife, and the rest: '[nor] cause to be completed,'—that is, nor cause to be performed [by such inferior sons] the 'solemnities,' meaning the funeral repast and other rites, in honour of his forefathers.

Which is explained.

28. "Under the family name (gotreṇa)."] Although, it is not ordained, that the family name is immediately instrumental in the ceremony, for a male born, and others; still since, in the vṛddhi-çráddha, a component essential of those ceremonies, use of the family name, is made; it applies also, to what is principal, [viz. those ceremonies themselves]. But in the rites of tonsure and the rest, it is used directly; for a text expresses: "The coronal locks of the boy, must be made with the enunciation of his patriarchal tribe."

Though the specification of the family name, is not directly made in the Játakarma and other rites, it is in their component, part, the vṛddhi-çráddha.

But it is directly made, in tonsure and other rites.

29. It is declared that filial relation proceeds from initiatory rites: these, [as applicable to different cases,] the author propounds affirmatively and negatively—"a son having been initiated, under the family name of his father, &c. &c."

Filial relation proceeds from initiatory rites: which are affirmatively, and negatively shewn, in the extract in § 22.

30. That son, who is initiated under the family name of his natural father, unto the ceremony of tonsure, that is in rites ending with that of tonsure, does not become the son of another man—'anyatas' must be rendered, in the sense of the regular genitive, 'anyasya' ('of another.')

Exposition of the passage alluded to.

Annotations.

28. Still since, in the vṛddhi-çráddha.] This is a ceremonial, performed on the occasion of every initiation, to secure prosperity to the individual.—It consists, in offering to the manes of three sets of three ancestors, oblations of rice, &c. &c.—The first set comprises, the mother, the paternal grandmother, and great-grandmother.—The second, the father, paternal grandfather and great-grandfather.—The third, the maternal grandfather, great-grandfather, and great-great-grandfather. If any of these should not be dead: the next nearest deceased ancestor, whose relation is analogous is substituted.

29. These the author propounds affirmatively and negatively.] Difficulty occurs in explaining, and translating, the intent of the author, in this part, consistently with his elaborate and abstruse commentary. The following illustration is offered with diffidence. In the extract from the Kálika-puráṇa, there is this passage, "A son having been initiated, under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man." By this the author implies negatively, that rites ending with tonsure, are the cause of filial relation to the adoptive father; and this has reference, to what the author regards, as the most preferable adoption—viz., that of a boy wholly uninitiated, and consequently recently born. "The ceremony of tonsure and other rites of initiation, being indeed performed under his own family name sons, given, and the rest may be considered as issue."—By this sentence, the author declares affirmatively, that tonsure and the rites following, are the cause, of filial relation, and this must be regarded, as applicable to the case, provided for in § 35, —viz., that, where a boy wholly uninitiated is not procurable.

31. In respect to the passage in question, there is this reconciliation.—It must certainly be affirmed, that, what is there declared, that, one on whom the ceremony of tonsure is completed, becomes not the son of the adopter, refers to the state, as son not in common; otherwise by this part,—"Having taken a child of five years, &c.," the propounding one even, whose ceremony of tonsure has been completed, to be son of the adopter, would be contradicted. That this passage necessarily regards a child on whom the ceremony of tonsure has been performed, will be made clear (v. § 48).

Apparent contradiction in the extract alluded to, reconciled.

32. Hence, if one who has been initiated in the different rites down to tonsure be adopted, he becomes son of two fathers: for he is initiated under both family names; and that the effect of this is his connection to both families, will be declared in the sequel.*

Conclusion, that if one initiated as far as tonsure, be adopted, he is the son of two fathers.

33. Thus, the different initiatory ceremonies, from that for a male born, down to tonsure inclusive, are declared to be the cause of filiation, [in the case of the adoption of one wholly uninitiated.]

Deduction, that the Játakarma and other rites down to tonsure inclusive, are the cause of filial relation.

34. A'chúdam ('unto the ceremony of tonsure') might have been used [by itself]. The subjunction of the term 'inclusive' (anta) is for the sake of authorizing, the affiliation of one whose coronal locks have not been made according to the form of his patriarchal tribe. For, the principal rites, not being completed, he is capable of becoming a son, and the part, commencing—("The ceremony of tonsure and other rites of initiation, &c. &c.,") is about to be explained.

The use of the word 'inclusive' subjoined to the terms 'unto tonsure.'

35. How is the case, should a boy, on whom the rites, commencing with that for a male born, have not been performed, not be procurable? Anticipating this question, the author adds—"the ceremony of tonsure and other rites of initiation, &c."

The part, "the ceremony of tonsure, &c." is added with reference to the case, where one uninitiated in preceding rites, may not be procurable.

36. When indeed, the rites of initiation, commencing with that of tonsure, are performed under his own family name,—that is—under the family name of the adopter, (the particle 'vai' (indeed) having an exclusive import): then, only can sons given, and the rest be considered as issue, else they are termed slaves.

Exposition of the part in question.

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* V. infra sect. 6, § 41, et sequ.

37. The complex phrase "chúdádya" signifies those rites, of which tonsure is first; but not rites antecedent to tonsure. For, with reference to what preceded, tautology would result.

Import of the phrase chudádya' restricted.

38. Therefore, even should the ceremonies commencing with that after birth and ending with that of 'annapráçana' or feeding with rice, have been performed under the family name of the natural father, there is no repugnancy [in the adoption]: and thus it is established, that the child, on whom the ceremony for a male born and the rest, have not been performed, is principal [as the object of adoption]; and one, on whom the rite of tonsure has not been performed, [but the other previous rites have,] is secondary.

Conclusion that one initiated in every rite preceding, tonsure may be adopted.

But, that, as an object of adoption, one wholly uninitiated is principal, and one initiated as far as tonsure exclusive, is secondary.

39. Sons given, and the rest.] By the term 'rest' are included, the son made, and the others, as has in fact been declared: they become sons by initiatory ceremonies also: not merely by adoption: for, that would defeat the opposite alternative subjoined "else they are termed slaves."

By "The rest" the son made, and the other sons are included, whose filial relation is from initiatory rites also.

40. 'Else']. The meaning is, should the ceremony of tonsure, and the rest, not be performed [by the adopter], or should one be adopted, on whom the ceremony of tonsure and other rites have been performed; a servile state ensues, not that of a son.

Import of the word 'else' occurring in the passage alluded to.

41. Since, that filial state, is produced from ceremonies; in the same manner as the being a sacrificial post and so forth; it is established, that one uninitiated is to be adopted.

General conclusion, that one uninitiated should be adopted.

42. A limited period for adoption being necessary, the author adds "after their fifth year, &c."

A limited period necessary and propounded to be the fifth year.

Annotations.

37. The complex phrase 'chúdádya,' &c.] This compound term, might admit of either interpretation.

Tautology would result.] The same position as that contained in the first sentence of the extract, would be declared.—This has been explained by the author, as referring to the adoption of one wholly uninitiated and consequently just born. In which case, the whole initiatory rites preceding tonsure, are to be performed by the adopter.

41. Sacrificial post and so forth.] The post and other implements, necessary for a sacrifice, are consecrated by the performance of ceremonies, and thus are qualified for the purpose.

43. One, though uninitiated, is not to be adopted after the fifth year: for, the time having gone by, he cannot become a son. By this it is declared, that the five [first] years only, are the season for adoption. Now, the propounding this position negatively is for the purpose of shewing that an age beyond five years, is not even a secondary season: for, otherwise by the rule, ("every season ulterior to the appropriate season, is pronounced secondary") it would follow, that any time, beyond the fifth year, were secondary.

After which one, though uninitiated, is not to be adopted.

Reason, why the position that the five first years are the season for adoption, is propounded negatively.

44. And, therefore, as by this passage ("commencing from birth, unto the third year, &c.") the third year, is the principal season for its performance: and since, year is mentioned in the conclusion ("after the fifth year, &c.") it follows, that in the extract in question, the word 'tonsure,' is meant to signify the third year. For, otherwise the consequence would be, that, where the ceremony of tonsure, took place at the same time, with the investiture of the characteristic cord, at his eighth year; one on whom the ceremony of tonsure had not been performed, might be adopted. Nor would, what was meant thus result: for, it would be at variance with the part commencing "after the fifth year, &c."

Term 'tonsure' in the extract § 22 intends the third year.

45. Hence, it is established, that the term 'tonsure,' in the passage,—"unto tonsure inclusive" —intending also, the third year, [limits] the proper season: that, beyond the third year, to the fifth, is the secondary season: but that after that, no time is even secondary [for the adoption of one initiated in rites preceding tonsure, but not in that rite].

Conclusion, that as far as the third year, is the primary season, and beyond that till the fifth, the secondary.

46. 'Are not sons.'] By this, it is intimated, that though filial relation be not produced, yet tonsure and other rites of initiation may be completed; for the time for the performance of these respectively, yet exists: still, however, they are only slaves, for filial relation is wanting; and this is the third cause of a servile state.

Deduction from the phrase 'are not sons.'

47. "Let not wives and sons, being unwilling, undergo sale, nor even gift." As for the prohibition in this text, of Kátyáyana, against the gift and so forth, of persons

A text of Kátyá.

Annotations.

46. And this is the third cause of a servile state]. The other two causes are indicated in § 40.

47. As for the prohibition in this text, &c.] From the text in question, the possibility of the gift of a son, however old, is inferrible, the author accordingly, to

yana, and an interpretative passage of Sarvajñya on Manu, from which the gift and adoption severally of one beyond the 5th year, are inferrible, explained as referring to a child, of that age.

unwilling, that even, must be interpreted as forbidding, the gift of a boy of five years only: not of one older.—And :—"one discriminating, not a minor." As for, what is thus interpreted by Sarvajñya, adverting to this reading,—("discriminating good and evil") in the text,—"whom a man takes being alike, &c."*: that must be explained thus—'a boy of five years only, discriminating by the faculty of reason: but not a minor [generally].' The meaning is, "he should not take [any] one, coming within, this definition,—'a minor (bála) is till the sixteenth year.'

Purpose and import of the passage 'having taken, &c.' in the extract § 22.

48. Then, if there be none uninitiated [unto tonsure inclusive], what is to be done? In reply to this, the author adds,—"having taken, &c." The meaning is,—having taken a boy five years old, initiated in rites ending with tonsure.

The passage, "the adopter should first perform a sacrifice for male issue" why subjoined.

49. But how can such be adopted, since he is declared to be a slave? Anticipating this objection, the author subjoins,—"The adopter should first perform the sacrifice for male issue." The objection is thus reconciled.

A passage from the Vedas cited, by which such sacrifice is shown to be productive of offspring.

50. "He who is desirous of issue should offer to Agni, parent of male offspring, an oblation of kneaded rice, roasted on eight potsherds; and to Indra, father of male issue, a similar oblation of rice, roasted on eleven potsherds. Fire grants him progeny, Indra renders it old." In this passage [of the Vedas] sacrifice is declared as a cause productive of offspring.

Annotations.

reconcile it with the doctrine, that the adoption is not to take place, after the fifth year, interprets, (though unsatisfactorily,) that, the text regards the gift of a child of that age: there being no ground to presume, the gift of one older.

As for what is thus interpreted, by Sarvajñya, &c.] The text alluded to, as interpreted, is one of Manu, describing the son made, or adopted—the expression, "discriminating good and evil," there occurring, is an epithet of the object of adoption.—If this phrase, as the interpretation by Sarvajñya, might imply, signify, one passed the years of minority: the rule, excluding from adoption, one of six years old, and upwards, would be contradicted: accordingly, the author restricts the passage of Sarvajñya, as intending, one of five years, capable of discrimination; not any minor in the general sense of the term.

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* Manu 9, 169.

51. Hence, in the case where the offspring is not born, its production is the effect to be produced: but where offspring already born is adopted, it is implied, that, in that case, since the birth has taken place, the filial relation, is the effect to be produced: for otherwise, the precept proposed would not be accomplished. Now, this relation cannot subsist, without the removal of the servile state: therefore the removal of that also [by the sacrifice,] must of necessity be admitted: otherwise, were [the sacrifice] productive of filial relation only, it would take place in any mere adoption of a son; and if [it be argued that] there, it is not required, since the filial relation is produced from initiatory rites only; then, the same is the case, in the instance proposed: for, those rites are here inferred from the term 'first;' and it is declared in the sequel; "The man should complete every initiatory rite, the ceremony for a male born and the rest."

Deduction, that where one initiated, be adopted, the effect of the sacrifice, besides filial relation, is the removal of the servile state.

52. Therefore, since filial relation, preceded by the removal of the state of slave, which had been occasioned by previous initiation, is produced by a sacrifice for male issue; it is established, that one though initiated [unto tonsure inclusive,] may be adopted.

Whence it is concluded, that one though initiated may be adopted.

53. If this is the case, then the passage should only recite,—"Having taken one initiated [unto tonsure inclusive]." What occasion is there, to use the expression, "a boy five years old?"—Should this be objected, it is erroneous; for, the passage intends this restriction—'a boy five years old only [i. e., under six]': and the restriction, is for the sake of securing, an investiture of the characteristic thread, conductive to the holiness, resulting from the study of scripture, which is preceded by the previous acquisition of letters.

Objection obviated.

Annotations.

51. The precept proposed.] That is the one, enjoining the production of a son. Those rites are inferred from the term 'first.'] By the use of the word 'first' in the passage; "The adopter should first perform the sacrifice, for male issue,"—the performance of rites, subsequent thereto, is implied, and initiatory rites are meant, as subsequently shewn.

53. For the sake of securing an investiture of the characteristic thread, &c.] The Vedas, or holy scripture must not be studied, till this ceremony has been completed; the fifth year, is the proper season, for learning the letters: therefore to secure an investiture of the characteristic thread, such as may be productive of holiness, resulting from the study of scripture, it is necessary that the adoption should be restricted to one of five years.

Further argument of opponent refuted.

54. And it must not be argued, that this restriction is established by the preceding sentence : for, this from its limiting the period, for [the adoption,] of one, whose initiation [as far as tonsure inclusive,] has not been performed, is received, as not intending the meaning in question.

Import of the term 'first.'

55. 'First',—that is, previous to initiatory rites being performed.

Objection obviated.

56. But it is asked, why is it not meant,—"previous to the sacrifice for adoption ?" Because, the past participle "having taken" being used, an antecedent time for the act of adoption, including all its essentials, is inferred : and the previous initiatory rites, being annulled by the sacrifice for male issue, the performance of other rites is absolutely necessary.

The passage ; "But the son of a twice-married woman, &c." is subjoined as an exception.

57. "After their fifth year, sons given, and the rest are not sons." In respect to this previous position, the author subjoins an exception ; "But the son of a twice-married woman, &c."

Definition of the son of a twice-married woman.

58. "A child begotten on a woman, whose [first] marriage had not been consummated, or on one, who had been deflowered [before marriage], is called the son of a twice-married woman.* By this definition, one born on a twice-married woman, of any of the seven descriptions, is included.

Annotations.

54. The meaning in question.] A boy five years old, or one, the sixth year from whose birth, has commenced.

57. The author subjoins an exception.] By the first sentence, ("after their fifth year, &c.) it is implied, that sons given, and the rest within their fifth year by adoption, acquire filial relation.—By the expression sons given, and the rest, the son of the twice-married woman, is included.—To except such description of son, from the operation of the rule mentioned, the author supposes the subsequent passage, ("But the son of a twice-married woman, &c.") to be subjoined.—By this, the adoption of such son, is restricted to the time of birth.

58. A twice-married woman of any of the seven descriptions.] These are specified in a text of Nárada, cited in the Mitákshará, in the chapter on granting loans.—They are the following :—1. The re-married damsel, whose first marriage had not been consummated.—2. A woman who having been guilty of incontinence, is given in marriage to another husband, by relatives apprehensive of legal penalties.—3. One given in marriage by kinsmen to a sapinda relation of her first husband, no brothers of the same existing.—4. One who during her husband's life co-habits with another.—5. Such a one who subsequently returns to her husband.—6. The widow who after her husband's death, avoiding his brothers and other kinsmen, from lust co-habits with another.—7. A woman forcibly taken, purchased, or induced by distress, who voluntarily prostitutes herself with another man.—It should be observed that the three first only in the strict sense of

* Yájñavalkya

Explanation of 'immediately on being born.'

59. 'I immediately on being born'] that is, as soon as produced: hence the time of birth only, is meant, no other.

Import of the term 'duly take.'

60. Duly take] that is adopt according to the rules of adoption.

Objection obviated.

61. But, for one just born, is not the ceremony for a male born, alone proper, on account of this rule,—"Before others have touched the new born boy, &c." Therefore, how can it be said: "immediately on being born, he should duly take as a son?" Excellent! for then, one unadopted, not having filial relation to the man himself, initiatory rites could not be performed: for, a text expresses,—"Let the father initiate his own sons, &c."

Further argument of opponent refuted.

62. Neither can it be said, that paternal right proceeds alone, from the relation, as natural father: for, this is denied, by this passage,—"the receptacle is more important than the seed;"*—and a text of Gautama recites, "of the other by special agreement, &c." The meaning is [the child begotten, on one man's wife,] is the son of the other,—that is the procreator,—by special agreement only, &c.

Conclusion, that in the case in question, adoption first takes place.

63. Hence in the case, in question, adoption takes place, anterior to the performance of the ceremony for a male born.

The passage "having performed, &c." propounds a variation to a general rule.

64. The performance of the initiatory rites, being inferred, as following the adoption, the author propounds a variation in this respect; "Having performed, &c." The meaning is this: After the adoption, having performed the burnt sacrifice, for the son of a twice-married woman, subsequently, let him perform the ceremony for a male born, and the other initiatory rites.

Annotations.

the term are 'punarbhu' or twice-married women, the others being denominated 'svairini' or self-guided. The whole however, are classed under the general term 'parapúrvá,' meaning one who has had previous connection with another man.

62. By this passage the receptacle, &c.] The close of a text from Manu, is here cited, which in its complete state, is thus. "Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land owner, for the receptacle is more important, than the seed."—The text of Manu, as well as that of Gautama, refer to,—where a husband being impotent, may appoint another, to raise up issue to him on his wife: in which case, unless with express agreement, the offspring bears not filial relation to the procreator.

* Manu 9, 52.

Objection of an opponent.

65. But, is not this impossible, since it is contrary to the argument, exemplified in the sacrifice [to fire] for a son born? Accordingly, on the same principle, as this is ordained, so is the burnt sacrifice, for the son of a twice-married woman, directed in the case in question. [Now this according to your opinion] is performed, previous to the ceremony for a child born: therefore, since it is to be completed in five days, the principal rite [being the ceremony] in question, would be barred.

Refuted.

66. Should this be objected: it is replied, that, in the case in question, the burnt sacrifice for the son of the twice-married woman, is not analogous to the sacrifice [to fire] for a son born, which is ordained in respect to spiritual purposes. Besides, [that used,] may be a mere unrestrictive order, of mentioning the former sacrifice, and the ceremony for a child born, and other rites for a son produced from the wife of another: in the same manner, as in this passage,—"Having performed the sacrifices prescribed for the day of the new moon, and that of the full moon, let him offer an oblation with the Śoma plant." Thus there is no repugnance.

It is not, a restrictive or absolute rule that the burnt sacrifice is to be first completed.

67. The particle vai [positively], having an exclusive import, the construction is—"For one directly after birth only, at no other time:"—therefore, a restriction as to the priority in time, or otherwise, of the sacrifice, for the son of the twice-married woman, is not deduced; as in the case, of the sacrifice [to fire] for a son born.

Annotations.

65. The argument exemplified in the sacrifice [to fire] for a son born.] Allusion is here made, to the 18th Topic, 3d Section of the 4th Book of the Mimánsá, by Jaimini, it is there proposed, as a subject for a disquisition, whether the sacrifice to fire, takes place immediately after birth, or when the ceremony for a child born, has been completed. The opponent argues, that the consequence should immediately follow its cause, and therefore, the sacrifice to fire, occasioned by birth, should be consecutive thereto.—On the other hand, the supporter of the right opinion contends, that, as the giving the breast to the infant, is ordained, after the completion of the ceremony for a child born, if the sacrifice is to be performed, previous to this ceremony, from the great delay, which must necessarily occur, before the breast could be given the child, its death would be occasioned; and in that case, there would be no object, to whom the fruit of the sacrifice, consisting in purification, and so forth, would accrue. Therefore, the sacrifice in question, does not immediately follow birth, but takes place, after the completion of the ceremony for a child born.

66. In the same manner as in the passage, &c.] In the 3rd Topic, 4th Section, 5th Book of the Mímánsá, a disquisition is proposed, whether a restrictive order, is intended, or not, in the passage in question, for the performance of the ceremonials specified. The opponent alleges, that a restrictive order, is deducible from the past participle, —'having performed,'—This is denied, by the supporter of the right opinion, on the ground, that the sacrifice with the Soma plant, is shewn, to be consecutive to the establishing a consecrated fire, in the passage,—"one about to offer an oblation, with the Soma plant, should [first] establish a consecrated fire" It should be observed, that without having first established such fire, an individual cannot sacrifice after the forms prescribed, for the Darça and Paurna-mása sacrifices, or those on the days of the new and full moon.

67. Therefore a restriction as to the priority, &c.] Great obscurity pervades the whole of this part of the work. The translator conceives, that in this particular place,

68. By the term 'every' alone, the meaning being complete, the mention of the ceremony, for a male born, and the rest, is added to exclude anterior rites, whilst the offspring was in the womb.—As for the use of the expression 'all,' notwithstanding the mention of the ceremony for a son born and the rest: that is, for the purpose of suggesting, whatever initiatory rites may belong to any particular individual; and hence, it is to be inferred, that although for Çúdras, there is no investiture of any characteristic cord, and so forth, still, they become sons even, by the ceremony of tonsure and other rites.

Purpose and import of the term 'every.'

69. "The man." Although a general expression is used, still, since one of the three first tribes only, is competent to perform, the burnt sacrifice, for the son of the twice-married woman; in respect to others, the filial relation proceeds from mere initiation alone.

A person not of the three first tribes cannot perform the sacrifice.

70. The author thus concludes, that the burnt sacrifice, and initiatory rites united, are the cause of filiation; "Being completed, &c. &c."

Deduction of the author from the passage "being completed, &c."

71. The meaning is: the burnt sacrifice for the son of the twice-married woman, being completed, 'from these,' that is,—from these initiatory rites,—a son of the twice-married woman, becomes filially related.

Passage explained.

72. Under the same head, the author of the Kálika-puráṇa propounds a rule, applicable to the son of the twice-married woman. "He should perform, at the funeral repast of his father, a rite dedicated to a single ancestor (ekoddishṭa); not any párvaṇa, or double rite, and so forth."

Rule in respect to the son of the twice-married woman, declared in another passage of the Kálika-puráṇa.

Annotations.

the author has omitted to express the train of reasoning, by which he arrives to the conclusion advanced. In the extract from the Kalika-puráṇa, it is first stated, that a person should regularly adopt the son of a twice-married woman, immediately after birth. The following sentence adds "having performed positively, (vai) for such, immediately on being born, the burnt sacrifice for the son of a twice-married woman, the man should complete every initiatory rite, the ceremony for a male born, and the rest."—This the author construes as implying pointedly, the performance of the sacrifice directly after birth. But the preceding sentence directs that adoption should then take place. From the contrast of the two injunctions, the author argues that no positive and restrictive rule, as to the priority in time or otherwise, for the performance of the sacrifice for the son of a twice-married woman, can be deduced.

As in the case, of the sacrifice [to fire] for a son born.] On a reference to the note subjoined to § 66, it will be perceived, that the sacrifice here alluded to, is restricted to be subsequent to the ceremony for a child born.

72. A rite dedicated to a single ancestor (ekoddishṭa) not any párvaṇa or double rite, &c.] The first sixteen funeral repasts, taking place after the ten days immediately succeeding the day of death, as well as that on the anniversary of such day, are ekoddishṭa. On these occasions the following articles are first presented in honour of the deceased;

73. The son of a twice-married woman, at the funeral repast of his father, on the anniversary of the day of death, should perform rites, dedicated to a single ancestor, not any párvaṇa, or double rites, and so forth.

Passage explained.

74. By the terms, "and so forth," the different variations of the párvaṇa rites, are likewise prohibited. For, a text of Játu-Karaṇa expresses,—"Annually, let the son of the wife, and legitimate son, perform [obsequies] according to the párvaṇa form: the other ten sons should perform a rite, dedicated to a single ancestor,"—and, a text of Parásara, recites; [A funeral repast] by the legitimate son, for a father, who has departed this life, on all occasions, is in honor of three ancestors: that, by those of a different general family, is consecrated to a single ancestor, on the anniversary of the day of death."

Import of its terms, 'and so forth.'

Játu-Karaṇa.

Parásara.

75. On the subject of sons, it had been said,*—"The son self-given and the slave's son, (Dása-putra)." Of these he describes the latter: "A female purchased by price, who is enjoyed, is a slave: it is thus declared. The son who is born on her, is considered a slave-son."

The slave's son, described in a passage of the Kálika-puráṇa.

Annotations.

—raw rice, liquid butter, honey, barley, soaked peas, fruit, water, frankincense, white flowers, kuça grass, a lamp, sandal-wood, betel, cloth, a thread, and water for the feet. The oblation of the funeral cake, then takes place—The párvaṇa or double rite, consists in the same oblations, and other ceremonials, being consecrated, on the death of the father and other sire, in honour of the ancestors on the mother's side, as well as in that of those on the father's side. Thus, besides, the articles above enumerated, a funeral cake is offered, to each of the three nearest deceased male ancestors, on the father's side, and mother's side. The oblations in honor of the ancestors on either side, being preceded by a Visvadeva offering—The term Visvadeva, denotes a certain set of divinities collectively, and the offering so called, is in their honor, and consists of the different articles, above enumerated: these should also be presented both on the occasion of a párvaṇa and ekoddishṭa rite, to the Lord of the soil—Rites in the form of párvaṇa, are celebrated by a rigid Hindu, on the following occasions; on the last day of every moon (amávásya)—on the 8th and 9th days of the dark fortnights of Pausha, Mágha, Phálguna and Áçvina, when oblations are made in honor of the mother, and two nearest deceased female ancestors in the line of the father,—on the full moon of Mágha,—during the whole of the first fortnight of Áçvina, which is denominated 'Pitṛipaksha' as peculiarly set a part for the performance of rites in the honor of ancestors: and particularly on the 13th of this month,—on any day of Agráhyana, previous to using the rice of the new crop,—in Vaiçákha, on occasion of the grain which then ripens,—in Áshádа for the rains: when the sun enters the constellation Ardra—on occasion of Eclipses, and visiting places of Pilgrimage.

74. The different variations of the párvaṇa rite] such as the daily funeral repast, consisting in oblations of rice, &c. to be performed in honor of either set of the three ancestors, on the side of both parents respectively, and a portion of the ceremony of 'sapindi-karaṇa.' The first of these, differs from the real párvaṇa rite, inasmuch as no pidda or Visvadeva oblation is offered. In the second, the same ceremonials are observed, but the objects in whose honor they are performed, are different (v. Note to § 35 of Sect. 6.)

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* Vide supra, § 25.

Explanation.

76. That female, though of equal class, being purchased by price, who is, 'enjoyed,'—co-habited with,—is denominated by former sages, a slave. For, a text expresses,—"That woman, who is bought by price, is not considered a wife: she neither [avails] in rites, in honour of the gods, nor in rites, in honour of the manes. The sages regard her as a female slave." One born on her, is a slave's son. The son of a female slave, is 'a slave's son (dásaputra)', the feminine of 'Dása' (slave) being like the masculine in the Vedas.

Other interpretation, of the compound term Dása-putra.

77. Or, the compound Dása-putra, may be explained,—'one who is both a slave and a son' or, thus—'a son denominated a slave.'

Rules regarding such son, laid down in another passage.

78. The author lays down the rules, regarding this son,—"[such a son] must not participate in the dominion of a king: nor of Bráhmaṇas, perform the funeral repast: he is the lowest of all sons: hence, let him reject him."

Explanation.

79. The meaning is,—since, he is lowest of all sons, he must not share in the dominion of a king, nor perform the funeral repast of Bráhmaṇas.

SECTION V.

The mode of adoption—Form by whom propounded—Necessity of observance—Effect of omission.

The mode of adoption.

1. The qualification of the person to be adopted, has been defined. The mode is now propounded.

Declared by Çaunakha.

2. On this subject, Çaunakha has said "I, Çaunakha, now declare the best adoption: one having no male issue, or one whose male issue has died, having fasted for a son."—

Illustration of parts of the text.

3. 'Adoption'—the form of adoption.—Having fasted on the day preceding, that of adoption—Vriddha Gautama has "The impotent man, or also, one whose offspring has died."

Continuation of Çaunakha's text.

4. "Having given two pieces of cloth: a pair of ear-rings, a turban, a ring for the fore-finger, to a priest religiously disposed, a follower of Vishṇu, and thoroughly read in the Vedas; having venerated the king and virtuous

Bráhmaṇas, by a 'madhuparka' (or prepared food consisting of honey, liquid butter and curds);"—

'King' there occurring means, the owner of the village.

5. 'The King' here signifies, the chief of the village, for a text of Vriddha Gautama recites,—"having invited all kinsmen and the chief of the village also."

A similar term in another passage has the same meaning.

6. As for also the term, 'Lord of the soil (Prithívíçáli)' in a subsequent passage of the same author even,—"After this, let him give a madhuparka to the Lord of the soil:"—that intends only the owner of the village: for, this, being expressed in what preceded, is the more forcibly suggested.

Exposition.

7. The meaning is,—having venerated three Bráhmaṇas, by a madhuparka, and so forth, for the purpose of asking [for the child to be adopted.]

Çaunakha continued.

8. "Both a bunch of sixty-four stems, entirely of the kuça grass, and fuel of the paláça tree also: having collected these articles, having earnestly invited kinsmen and relations;"—

Exposition.

9. 'Kinsmen' (bandhun)—his own, his father's and mother's kinsmen. 'Relations' (jñyátin)—sapiṇḍas. The invitation of kinsmen, and the others, is for the sake of their witnessing: in the same manner, as the invitation of the king: for both terms are confirmatory of this, in the sense,—'They unite with (badhnanti),'—and 'know (jánanti)' as their own, the adopted person.

Çaunakha continued.

Interpretation.

10. "Having entertained the kinsmen with food: "and especially Bráhmaṇas;"—The meaning is,—having entertained invited kinsmen and Bráhmaṇas, previously appointed, and (on account of the conjunction 'and' in § 8) invited relations.

Çaunakha continued.

11. "Having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the liquid butter. Having advanced before the giver, let him cause to be asked thus,—'give the boy.'"

Annotations.

9. For, both terms are confirmatory of this, &c.] Both terms, viz. 'Bandhun' (kinsmen) and 'jñyátin' (relations). 'Bandhu' and, 'jñyáti' of which, these terms are severally the accusative case plural, are derivatives of the roots 'badha' bind, 'jñyá' know.

Explanation.

12. The meaning is,—let him cause a demand, to be made through Bráhmaṇas, previously appointed.

13. "The giver, being capable of the gift, [should give] to him, with the recitation of the five prayers, the initial words, of the first of which, are,—yé-yajñena, &c."

Çaunakha continued.

14. The capacity to give, consists in having a plurality of sons, and the assent of the wife, and so forth.—'Should give,' is understood before this part,—"with the recitation of the five prayers;" for, gift is indicated in the prayer, commencing—"Let him receive a male from an intelligent person."

And commented on.

15. "Having taken him by both hands, with the recitation of the prayer, commencing,—"devasyatva, &c.;" having inaudibly repeated the mystical invocation "Angad-angat, &c.;"* having kissed the forehead of the child: having adorned with cloths, and so forth, the boy, bearing the reflection of a son:"—

Çaunakha continued.

16. 'The reflection of a son.'] The resemblance of a son,—and that is, the capability to have sprung from [the adopter] himself, through an appointment [to raise issue on another's wife], and so forth; as [is the case] of the son, of a brother, a near or distant kinsman, and so forth. Nor is such appointment of one unconnected impossible; for, the invitation of such [to raise issue] may take place under this text: "For the sake of seed, let some Bráhmaṇa be invited by wealth, &c."

Comment.

Annotations.

13. With the recitation of the five prayers.] The translator has not yet been able to learn the particular five prayers, alluded to.

14. And the assent of the wife.] The reading 'pati' (the husband) is found in some copies: but that of 'patni' (the wife) appears to be the more prevalent, and on that account adopted in the translation. The author does not mean that the gift of a son, without the assent of the wife, would be invalid, but with reference to his doctrine, in Sect. IV, § 15, that, such assent is essential to render the gift preferable.

16. Through an appointment [to raise issue on another's wife] and, so forth.] By such an appointment, or marriage, and the like.

As [is the case] of the son of a brother, &c. &c.] Such son, might have been begotten by the adopter himself, had he been appointed by the husband of the boy's mother, on account of his own impotence, to raise up issue on his wife; or, if the adopter himself, had married, the mother of the boy.

* V. infra § 7, Sect. VII where this passage from the Vedas, is cited at large.

Deduction, that a brother, uncle, &c. who could not have been begotten by the adopter, are not to be adopted.

17. Accordingly, the brother, paternal and maternal uncles, the daughter's son, and that of the sister, are excluded; for they bear not resemblance to a son.

To which position, a subsequent passage of the same author has reference.

Where, the term 'sister's son' includes all not resembling a son, on account of prohibited connection.

As explained.

18. Intending this very position, it is declared in the sequel, by the same author:—"The daughter's son, and the sister's son, are declared to be the sons of Çúdras. For the three superior tribes, a sister's son, is no where [mentioned as] a son.*" Here even, the term 'sister's son' is illustrative of the whole not resembling a son, for prohibited connection is common to them all. Now, prohibited connection is the unfitness, [of the son proposed to be adopted,] to have been begotten by the individual himself, through appointment [to raise issue on the wife of another.]

Passage of the Grihyaparisishta, describing prohibited connection in the case of marriage noticed and explained.

19. "The mutual relation between a couple, being analogous to the one, being the father or mother of the other, connection is forbidden: as for instance,—the daughter of the wife's sister, and the sister of the paternal uncle's wife."—The meaning of the text is this. Where, the relation of the couple, that is of the bride and bridegroom, bears analogy to that of father or mother: if the bridegroom be, as it were, father of the bride, or the bride stand in the light of mother, to the bridegroom, such a marriage is a prohibited connection. The two examples illustrate these cases in their order.†

Conclusion, that, one with whose mother the adopter could not have legally married, must not be adopted.

20. In the same manner as in the above text, of the Grihyaparisishta,* on marriage, prohibited connection, in the case of marriage, is excepted; so, in the case in question, [one, who, if begotten by the adopter, would have been the son of] a prohibited connection, must be excepted; in other words, such person is to be adopted, as with the mother of whom, the adopter might have carnal knowledge.

Annotations

20. In the case in question.] That of adoption.

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* V. supra 2, 74.

† The translator has here omitted an explanation in the original, by other terms, of the words used in the quotation, to express the daughter of the wife's sister, and the sister of the paternal uncle's wife. The translation in English would be a ludicrous tautology.

Çaunakha continued from § 15.

21. "Accompanied with dancing, songs and benedictory words, having seated him in the middle of the house: having according to ordinance, offered a burnt offering of milk and curds, (to each incantation,) with recitation of the mystical invocation,—" Yastva-hrida:" the portion of the Rig-veda, commencing,—'tubhyam-agne:" and the five prayers, of which the initial words of the first, are Somo-dadat, &c.'"

Explanation.

22. The meaning is,—with such seven incantations, having offered seven burnt offerings of milk and curds.

Rule propounded by Vriddha Gautama.

23. Vriddha Gautama, propounds' a special rule: "Let him then, cause to be offered, as burnt offerings, an hundred oblations of milk with liquid butter, contemplating in his mind, as the object, the lord of created beings, with recitation of the prayer "prajapate-na-tva-detam, &c."

Stanzas following, the part of Çaunakha in § 15, have been before cited and explained.

24. The stanzas, which follow the passage, [of Çaunakha last quoted,] commencing,—"The adoption of a son, by a Bráhmaṇa, &c."* and ending with,—"such gift is to be made, on account of difficulty,—"† having been before explained.

Çaunakha continued.

25. Next in order, to these stanzas, is this passage,—"Let the best of the regenerate to the extent of his ability bestow a gratuity on the officiating priest."

Comment.

26. "The best of the regenerate."] A Bráhmaṇa.

Text.

27. "A king half even of his dominion: next in order, a Vaiçya three hundred pieces."

Comment.

28. 'Half even of his dominion.'] The produce for one year, of half his dominion; for a text of Vriddha Gautama, recites,—'Let him proffer the profits, arising from half his dominion, received in one year." And, this is with respect to one of the royal tribe.—'Pieces.'] Three hundred stampt coins (nánaka), and this must be understood, to mean of gold, silver or copper, with reference to the state of the individual, being superior, middling, or inferior, respectively: on account of the text of Vriddha Gautama,—"Let him proffer three hundred pieces in gold, or in silver, or in copper, according as his condition may be superior, or otherwise."

Text.

29. "A Çúdra, the whole even of his property: if indigent to the extent of his means."

* Sect. II, § 2, et. seq. † Sect. IV, § 1, 8, 18, 19, 20 & 21.

30. "The whole of his property."] That is, the amount earned by the labour of one year. for, the expression,—'Received in one year,'*—is not special; and there is this prohibition, "if offspring exist, the whole of the property, must not be given."

Comment.

31. Vasishtha propounds another mode. "Man produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore, his father and mother have power to give, to sell, or to abandon, their son. But let no man give or accept, an only son: for, he is [destined] to continue the line of his ancestors. Let not a woman give or accept a son, unless with the assent of her husband. A person being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred and announced his intention to the king, and having offered a burnt offering, with recitation of the prayers denominated 'Vyáhriti' in the middle of his dwelling. But, if a doubt arise, let him set apart like a Çúdra, one whose kindred are remote. For, it is declared [in the Vedas] 'Many are saved by one.' When a son has been adopted, if a legitimate son, be afterwards born, the given son, shares a fourth part."

Mode of adoption propounded by Vasishtha.

32. Of this, the part commencing from,—"Man produced from virile seed and uterine blood, &c." and ending,—"unless with the assent of her husband,—" has been before explained.

First part of this text has been before explained.

33. 'Kindred'] The kindred of himself, his father and mother—'The king.'] The chief of the village.—'Dwelling'.] His house.

'Kindred' and other terms explained.

34. 'With recitation of prayers, &c.'] On conclusion of the 'ájyabhága' sacraments, having offered with fire, four oblations with recitation of the prayers, denominated "Vyáhriti" severally, and collectively. Such is the meaning.

Import of the phrase 'with recitation of the prayers, &c.'

35. 'An unremote kinsman'] this has been explained.†

Term 'unremote kinsman' before explained.

Annotations.

35. The prayers denominated 'Vyáhriti,' &c.] These are three prayers in the Vedas, distinguished, by pre-eminence, by this term: and when recited consecutively, they are denominated, Mahá Vyáhriti, or great Vyáhriti. This term, in its original sense, signifies enunciation.

* Occurring in the passage of Vriddha Gautama, cited in § 28.

† V. Supra Sect. 2 § 16.

But if 'a doubt arise, &c.' explained.

36. 'But if doubt arise, &c.'] He, whose kinsmen are in a distant country, is one whose kindred are remote, being widely different by country and language! should such a person be adopted, a doubt even exists, with respect to his race, disposition, and so forth; this being the case, let him set him apart like a Çúdra: until the ascertainment [of doubtful particulars] let him not hold communion with him; this is the meaning.

Explanation of the passage, 'It is declared, &c.' which is subjoined as a reason.

37. On this point the author subjoins a passage of revealed law, as a reason. "It is declared, &c." through one son, 'many,'—the father and other ancestors,—are to be saved. On this account the adoption of a son takes place: not that through one, many may be condemned: now, a doubt existing, on one side, condemnation is possible: therefore, he should not hold communion with him: for an offence, though eventual, must be avoided.

Different reading and construction in the Kalpataru, noticed.

38. But, the author of the Kalpataru, adverting to the reading,—"asannikrishtam-eva"—says: "'one even whose kinsmen are not at hand, (asannikrishtam-eva)'—even one whose good or bad qualities are not known. The particle 'eva' is in the sense of,—even—or though. 'But if doubt arise';—on account of his kinsmen, not being near, should a doubt, with respect to his class arise; considering him as a Çúdra, let him set him aside, destitute even of initiation—A Çúdra even, is indeed a son, this is the implied import."

And shown to be inaccurate.

39. Either of these expositions of the implied meaning, is inaccurate: for the adoption of one of a different class is forbidden. Therefore the passage in its obvious sense only is correct.

The part "when, &c." implies a special rule.

40. After the adoption of a son given, should a real legitimate son be born, the author (Vasishtha) propounds a special provision with respect to the division of the heritage;—"when, &c." The meaning is: this son given, being adopted, if a real legitimate son be born, then the son given, receives a quarter-share: not an entire share (*a*).

Annotations.

38. But the author of the Kalpataru, &c.] A variety of reading and interpretations of the passage of Vasishtha, here referred to, occur. The passage as read by Nanda, is thus: 'adura-bandhavam-bandhu-sannikrishtam-eva pratigrihniyat:' which is rendered, should take an unremote kinsman, or the near relation of a kinsman—The variation of reading, in the Kalpataru noticed, is the substitution of 'asannikrishtam' for 'bandhu-sannikrishtam'; and the passage is accordingly differently explained in that work: the variety in the reading and interpretation of this passage, is fully noticed by Mr. Colebrooke, in a note subjoined to chap. I. sect. XI. § 13, of his translation of the Mitákshará on inheritance.

(*a*) See 1 Mad. H. C. Rep., 49: 1 Morl. Dig. 306.

It is a topic for consideration, to what sons the form prescribed, for adoption applies.

41. It is to be considered, whether this form [for adoption] in question, is to be applied, [generally] to the son bought, and the rest, or its application be determined by the distinction in the part, which preceded; —" to give, sell, or abandon their son."

Baudhayana propounds a particular rule in respect to those following the Taittiri portion of the Vedas.

42. Baudhayana, propounds a particular rule, for those following the Taittiri portion of the Vedas;—" We are about to explain the mode, for the adoption of a son"—(here follows the same, as in the quotation from Vasishtha, from " Man produced, &c." down to, " unless with the assent of her husband.") " One about to adopt, produces two pieces of cloth, a pair of ear-rings, a ring, and a priest, thoroughly read in the Vedas, a bunch of sixty-four stems of the kuça grass, and fuel of the 'purna' tree.* Then having invited kinsmen, into the middle of the dwelling, and having made a representation to the king: having sat down by the direction of a Bráhmana,† in the assembly, or in the middle of his house: having caused to be exclaimed, auspicious day! benediction! prosperity!: having performed rites, commencing with the recitation of the prayer 'Yaddeváyajana,' down to the placing the vessels for water: having advanced before the giver, let him thus beg 'give me this son.' The other replies 'I give.' He receives the child [and says] 'I received thee, for the sake of religious duty. I adopt thee, for offspring.' Then having adorned him, with cloths and ear-rings and ring: having performed the investiture, and other ceremonials, down to the kindling, a flame of fire: having dressed the oblations, he offers a burnt offering. After having recited the incantation in the first chapter of the [Yajur] Veda, commencing '(Yas-tvá-hridákírináma-nyamána)' with recitation of the sacrificial prayer " Yasmai-tvan-sukritejáta-vede, &c." he offers a burnt offering—Next, having performed the burnt sacraments, where the prayers denominated 'vyáh-

Annotations.

41. It is to be considered, &c.] It is subsequently determined, that the form is applicable to the sons made, and self-given, as well as the three sons, indicated by the terms,—" to give, sell, or abandon" viz., the sons given, bought, and deserted. (v. infra § 49, 50, and 51.)

The Taittiri portion of the Vedas.] This is included in the Yajur Veda, and takes its name from 'tittiri' a partridge—" The text of this Veda being disgorged by Yájñyavalkya, in a tangible form, and picked up by the rest of Vaisampáyana's disciples, who for the purpose assumed the shape of partridges—" (Wilson in his Dictionary on the word—taittiriya.)

* Butea frondosa.

† The reading in copies of original gives " having presented Bráhmanas with prepared food" but this appearing erroneous and inconsistent with practice, the translator has adopted the reading in the Dattaka Chandriká.

riti' are recited: [and] that designated 'svishta-krit'* with other ceremonials, being completed, down to the bestowing an excellent cow, he presents the fee [saying, 'yours are] these two cloths, the ear-rings, and the ring likewise.' But subsequently, if a real legitimate son is born, he [the adopted son] succeeds to a fourth share; so says Baudhayana."

A text of Vriddha Gautama, intimating an equal partition between the adopted and legitimate sons, refers to where, the first possesses, and the latter is destitute of good qualities.

43. As for the text of Vriddha Gautama, "A given son abounding in good qualities (yatha-játe) existing: should a legitimate son, be born at any time: let both be equal sharers of the father's whole estate." That must be construed, as supposing the former possessed of good qualities, and the legitimate son, destitute of the same: on account of the epithet 'yatha-játa' ('abounding in good qualities'). He, in whom there is a 'játa,' that is an assemblage (samuha) of good qualities, (implied by 'yatha') is 'yatha-játa,'—one abounding in good qualities. This is the meaning; for, the term "yatha" is significant of similitude, depending on quality.

This construction, supported by a text of Manu.

Conclusion as to its accuracy.

44. Accordingly, by this text, ("of the man, to whom a son has been given, adorned with every virtue, he even, shall take the heritage, though duly brought from a different family,") Manu hath declared on defect of the real legitimate son, the succession [of the son given,] to the whole heritage. Therefore, his participation of a moiety, a legitimate son [not possessing good qualities] existing, is even proper.

The same author provides against an informal adoption.

45. The same author propounds a special rule, should the due form for adoption, not be observed: "He, who adopts a son, without observing the rules ordained, should make him a participator of the rites of marriage: not a sharer of the wealth."

Exposition of his text.

46. The meaning is; the marriage only, of one adopted, without the form for adoption, is to be performed; no wealth is to be bestowed on him: on the contrary, in such case, the wife and the rest even succeed to the estate: for, without observance of form, his filial relation is not produced.

The necessity of observance of form, to constitute the filial relation of the adopted, declared by Vriddha Gautama.

47. Accordingly Vriddha Gautama. "The sons given, purchased, and the rest, who are adopted from those of his own general family, by observance of form acquire the state of lineage [to the adopter]; but the relation of sapinda, is not included." Here, there is this restrictive rule: 'by observance of form only, acquired the state of lineage;' for, the forms for gift, and so forth,

* This sacrament is so called from the prayer, read on the occasion.

from being comprehended in the descriptions of the son given and the rest, [are necessary to] complete the peculiar nature of each. For instance, [in Manu's description of the son given], it is said: "give as a son in a time of distress confirming, the gift with water"; here the mention of water is illustrative of the whole form necessary for the gift [of a son]; and hence the form for adoption also is implied: for a text of Manu expresses,—"Though duly brought from a different family." The meaning is 'obtained legally,—according to form.'

What three sons are denoted by the word 'rest' used by Vriddha Gautama.

48. "Purchased and the rest." By the word 'rest' the sons made, deserted and self-given, are included. For, by the expression "as specified" in the text subjoined, it is declared by Manu, that those only, who are qualified by the form, indicated in their respective descriptions, are substitutes for sons. "The sages declare these eleven sons, (the son of the wife, and the rest) as specified, to be substitutes for the real legitimate son; for, the obsequies would fail." Accordingly in the description of the son made,—"whom being equal in class a man affiliates (prakuryát,) &c."—by the preposition 'pra' [which has a perfective import],—in the description of the son deserted "whom a man receives (pari-grihniyat) as his own son, &c."—by the preposition 'pari' [implying thoroughly],—and in the description of the son self-given,—"who offers (sparsayet) himself, &c."—by the verb 'offer' synonymous with 'give,' reception in adoption (parigraha) with the observance of form, is declared.

Annotations.

48. By the word 'rest' the sons made, &c.] The reasoning of the author, in restricting the word 'rest' occurring in Vriddha Gautama's text, as denoting only the sons made, deserted and self-given, is not obvious. It should be observed, that, this text refers to sons, who may be adopted by an overt act of reception, from amongst those of the same family, whose filial relation is declared to be produced by the observance of form only, (of course the form applicable to such adoption); and whose relation, as sapinda (meaning here by blood) is barred. The author restricts the sons alluded to in this text, whom the terms 'the rest' denote to the three mentioned, by referring to Manu, who declares that, the sons only, as previously described by him, are substitutes for the real son; or in other words, possessing filial relation. But of the descriptions which preceded, in these only of the sons made, deserted and self-given (besides, the son given and bought,) is adoption, by an overt act of reception, and with the observance of the form proper for the same, indicated. Thus, in the descriptions of the sons made and deserted, the species of adoption, in question, with the observance of the proper form is implied by the verbs 'pra-kuryát' and 'parigrihniyat' meaning literally, 'completely makes' and 'thoroughly receives.' The son self-given, described as one who 'offers (sparsayet) himself, &c.' and the author explains this verb as synonymous with, — to give: but the gift cannot be completed without an overt act of reception on the adopter's part perfected by the observance of the proper form. The same may be observed, in the case of the sons given and bought. On the other hand, the other six sons cannot be referred to in Vriddha Gautama's text, as in their descriptions by Manu, adoption with an overt act of reception, and observance of form for such adoption, is not implied; and besides these are connected by blood, as containing portions of either of the adoptive father, or his wife, and those who on that account were before declared, to be adoptive sons of right (v. Sect. 1, § 34 and 35.)

49. Intending the same, after having premised,—"therefore his father and mother have power to give, sell or abandon their son," by Vasishtha also is the form for adoption declared. "A person being about to adopt a son, &c." Now from the expression 'adopt' (parigraha), this form is to be applied to the adoption likewise of the sons made, a self-given: for the same is implied by Manu by each preposition respectively [in their several descriptions.]

The form propounded by Vasishtha is applicable to the five sons, in question.

50. Therefore the filial relation of these five sons proceeds from adoption only with observance of the form of either Vasishtha or Çaunakha; not otherwise.

Conclusion that their filial relation is produced by the observance of a form only.

51. As has been determined in the case of the son of the wife by Manu and Yájñavalkya: for, [the necessity of] observing form, is declared affirmatively and negatively in these and other texts—"Even the son of a wife duly authorized not begotten according to law is unworthy of the paternal estate. For he was procreated by an outcaste."* "Either brother appointed for this purpose who deviates from the strict rule and acts from carnal desire shall be degraded, &c."†

In the same manner, as in the case of the son of the wife, as declared by Manu. Yájñavalkya.

52. As for what is declared in the Subodhiní, a commentary on the Mitáksharà,—"and the elders regard that property as temporal; like the filial relation and so forth:" that must be rejected, as contradicted; since it is repugnant to authorities cited: and because from the adoption only of a holy saint (ârsha) (that is,—one propounded by a holy saint) the relation as son is declared to proceed by Paithinasi in this text; "Now these sons given, purchased and made, and the son of the appointed daughter who are in this case affiliated through the adoption of a holy saint by another are not sons of two fathers [being] unconnected to those of the family, (asângata-kulínádvyámushyáyaná.)"

An inference to the contrary, which might be drawn, from a passage of the Subodhiní, inadmissible.

Being at variance with authorities cited; and a text of Paithinasi.

53. Such, to whom those of the family (that is the family of the natural father) are not connected, [are asangata-kulína; and] persons not sons of two fathers and the same, [are asangata-kulínádvyámushyáyaná.] The

Explanation of the text.

Annotations.

49. **Now from the expression 'adopt' (parigraha)].** Literally completely receiving.

53. **Persons sons of two fathers and the same.]** The author analyzes Paithinasi's phrase 'asangata-kulínádvyâmushyáyaná.' He begins by explaining the first member

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* Manu 9, 146.

† Yájñavalkya.

meaning is,—those who are adopted according to the form of a holy saint are not allied to those of the family of the natural father : therefore they are not sons of two fathers.

Another reading noticed as admissible.

54. Or the reading 'Dvyámushyáyaná' (sons of two fathers) may be admitted. For it will be declared in the sequel,* that where, both the natural and adoptive fathers perform the different ceremonies, the state as son of two fathers ensues.

Passages of Medhátithi indicate that filial relation only proceeds from the observance of ceremonies.

55. "Although it may be used like the word Indra and so forth; still, since the prevailing sense proceeds from popular recognition and the production of [a son] is ordained in holy writ, the general acceptation of 'son,' like the general acceptation of 'wife' and the like, must be understood." By the purport of this and other passages, Medhátithi also declares the filial relation in adopted sons to be occasioned only by the proper ceremonies.

General conclusion.

56. It is therefore established that the filial relation of adopted sons is occasioned only by the [proper] ceremonies. Of gift, acceptance, a burnt sacrament, and so forth should either be wanting, the filial relation even fails.

Annotations.

of this complex expression 'asangata-kulína' which is itself a compound and then indicates the class of compound to which the whole is to be referred. Thus the sentence 'persons sons of two fathers, &c.' shews that the complex phrase in question is a karmadháru samáça, or compound of nouns, designating the same person ; and not a dvandva samáça, or conjunct compound of nouns indicating distinct persons, but having a common government.

54. Or the reading, &c.] The variation in the reading noticed consists in 'Dvyámushyáyaná' being read without the privative *a*, instead of with it, as in that preferred by Nanda. If that now noticed be adopted, sangata-kulína (connected, &c.) must be construed as contained in the text instead of asangata-kulína (unconnected, &c.) For by the rules of orthography, whether '*té*' (which occurs in Paithinasi's text) be followed by sangata or asangata in coalition, the same form 'te-sangata' is exhibited, though it is usual to insert a diacritical mark equivalent to our apostrophe to denote the presence of the vowel *a*.

55. Like the word Indra and so forth.] The word Indra is figuratively used, to express a person of great wealth : the word son may in the same manner be used in a figurative sense.

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* V. Infra Sect. 6, § 11.

SECTION VI.

Rule for Succession where the real son and one formally adopted; and where one formally and one informally adopted may co-exist—Relation in respect to family and so forth of the absolutely adopted son—of the Dvyámushyáyaṇá—who is described.

Çaunakha provides for the cases were a real son and an adopted son, and one formally and one informally adopted may co-exist.

1. Next should the real legitimate son and son given and son adopted, without observance of form be co-existent; the same author propounds the succession to the estate. "Him, existing,—a son being created: and a son given, existing,—one being adopted informally: that estate is his only who is justly master of the father's wealth."

Interpretation of the part of his text providing for the first case.

2. "Him,"—the real legitimate son existing; whatever son is created by adoption and so forth; of these to him only, who is master of the father's wealth 'justly,' that is—by obvious inherent right,—does that estate belong: not to another. The meaning is that if a real legitimate son exist, the adopted son is not a sharer of the wealth: for in the affiliation of a son, the non-existence even of real legitimate issue is an essential condition.

Of that providing for the second case.

3. Thus a son given, that is one adopted according to form existing, should a son be made without observance of law: of these likewise the son-given only is participant of the estate, not the one adopted without observance of law. Such is the meaning: for, ordained form alone produces the filial relation.

A son adopted previous to the birth of a real son has no right of primogeniture as shewn by another text of Çaunakha.

4. Should a son-given, and the real legitimate son exist together, the son-given does not receive the share of an elder brother. This, the same author propounds,—"Subsequent to the adoption of a son-given, other sons being born,—should the father divide his estate; let him not be the partaker of the share of an elder brother."

Text explained.

5. The meaning is this,—after the adoption of a son-given, a legitimate son also being born: the son-given does not receive the share of an elder brother.

A rule propounded by Manu.

6. Manu next propounds another rule. "A given-son must never claim the family and estate of his natural father.(a) The funeral cake follows the family and estate; but of him who has given away his son, the obsequies fail."

Explanation.

7. The son-given must never claim his natural father's family and estate. Thus, 'the obsequies'—that is, the funeral repast [which would have been] performed by the son-given fails of him who has given away his son.

Explanation in the Chandriká.

8. The author of the Chandriká thus explains, "By this it is declared that by the act alone, creating the filial relation, property of the son-given in the estate of his adopter is established, and connection to him as belonging to the same family ensues: But through extinction of the filial relation from the mere gift, the property of the son-given in the estate of the giver is extinguished; and connection to the family of the giver annulled."*

A text of Vrhat Manu conclusive, that filial relation to the adopted father is established.

9. But although by the text of Manu, connection to the family of the natural parent is annulled: what proof is there as to the connection to the family of the adopter being established? on this point Vrhat Manu declares,—"sons given, purchased and the rest retain relation of sapinda to the natural father as extending to the fifth and seventh degrees; like this general family, [which is] also that of their adopter."

Explanation of the text.

10. The relation as sapiṇḍa of sons given, purchased and the rest to the natural parent continues: by gift, and so forth even that does not fail; for by reason of consisting in connection through containing portions [of the natural father], it is not possibly to be removed while the body lasts. By this it is declared that the relation of sapiṇḍa in question is the consanguineal connection only and not connection by the 'piṇḍa' or funeral cake; for that this latter is barred is shewn by this passage,—"Of him who has given away his son the obsequies fail." Anticipating a question as to the extent of this relation as sapiṇḍa, the

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Annotations.

10. By this it is declared, &c.] The word 'piṇḍa' signifies either the 'body' or a 'cake' or ball of food presented to the manes of the deceased; the word 'sapiṇḍa' therefore, may denote either one consanguineally related, or one connected, through an oblation of such funeral cake.

(a) See 1 Mad. H. C. Rep. 182.

* Vide Smṛti Chandriká, Sec. 11, § 19, where this quotation in part occurs.

author adds,—"Extending to the fifth and to the seventh degree, &c." The meaning is this: 'Extending to the fifth degree'—completing five, that is—embracing,—five degrees. So of the expression 'to the seventh degree.'

A text of Gautama confirmatory.

11. Gautama also, "With the kinsmen on the side of the father (viz. of the procreator víjí) beyond the seventh degree; and with those on the mother's side beyond the fifth, &c."

The word 'víjí' occurring denotes generally the natural father of any description of adoptive son, as proved by a text of Manu.

12. Here the word 'víjí' (the procreator) is used for the sake of comprehending every one even, the natural father of a son given and so forth; not merely the natural father of the son of the wife only: for a text of Manu expresses, "As for these, denominated from the context sons though produced from the seed (víja) of others: they are [sons] of that person from whose seed they severally sprang; and of no other.*

Of whose text the sentence 'they are sons, &c.' is to declare the connection of sapinda.
And the expression 'no other' to denote the adopter.

13. 'They are sons of that person.' This declaration that they are sons is for the sake of propounding the connection of sapiṇḍa [by the body]; and not to establish filial relation. For that would be at variance with the declaration of filial relation [to the adoptive father] contained in this and other texts,—"Of these twelve sons of men, &c."†—'Of no other'] not of the adopter.

Objection that the relation as sapinda, may subsist to both fathers, refuted by a text of Vriddha Gautama.

14. But analogous to the case of the daughter may not the relation of 'sapiṇḍa' to both [the giver and the receiver] be admitted: for like the state of lineage, the relation of sapiṇḍa is established by the adoption.—Should this be objected it is wrong; for it would be at variance with the text of Vriddha Gautama.—"The sons given, purchased and the rest who are adopted

Annotations.

12. Here the word 'víjí' is used, &c.] This word signifying literally the owner of the seed, is more particularly used, to devote the person appointed to raise issue on the wife of another: in contradistinction to the husband of such woman, technically called the 'kshetri,' or owner of the soil. The author accordingly deems it necessary to explain that the word as used by Gautama has not such particular and limited sense: this he supports by referring to a text of Manu, where the word 'víja' or seed is used, in respect to the natural father of any subsidiary son.

14. But analogous to the case of a daughter.] A damsel retains the relation of sapiṇḍa to her father who gives and acquires the same to her husband who receives her in marriage.

* Manu 9, 181.

† Manu 9, 158.

from those of his own general family by observance of form acquire the state of lineage [to the adopter]. But the relation of sapinda is not included."

Explanation of his text.

15. Those sons given and the rest who are adopted 'from those of his own general family'—from among his general family acquire by the observance of form 'the state of lineage'—the state of offspring. But in respect to these the relation of sapinda 'is not included' by the form,—meaning—is not established.

Which, à fortiori, bars the relation of sapinda, in the case of one of a different general family.

16. If the relation of sapinda be not established in those even of the same general family, it is declared *à fortiori*, that such relation is not produced in the case of one of a different general family.

Argument in favour of the general position, as to the consanguineal relation of sapinda to the adopter, not existing in the adopted.

17. And this is proper. As [in the case of the daughter] by reason of her proceeding from the father and producing in concert with the husband, the same body [their issue] the relation of sapinda [by the body] to both is established: in the same manner in the case of the son given it is not established; for though he proceed from the natural father, the producing in concert with the adopter a common body is wanting.

Which is confirmed by a text of Devala.

18. Accordingly, Devala in the text subjoined (since the family name, a share on the funeral cake are specified,) by the term 'merely,' bars the relation even of sapinda.—"For the sake of religious merit [being adopted] like the real son under the family name of each respectively,' (tat-tat-gotrena) sons [who are], reared: for such merely participation in a share, and [the oblation of] the funeral cake is declared."

Opponent's objection that Devala's text regards a particular son for religious merit.

19. But is not this irrelevant to the subject proposed: for it regards the son for religious merit. Thus:—in those sons who like the real son are reared for the sake of religious merit 'under the family name of each respectively,' (that is under the family name severally of each only,) does the mere participation alone in a share and the funeral cake vest: not, (for such is the intent,) the relation of sapinda to the adopter. Hence the text imports the want of connection of sapinda of that son only to the adoptive father . not of the son-given.

Annotations.

18. **Devala in the text subjoined.]** In the Vyavahâra Mayúkha, this text is cited as attributed to Nárada and alleged to be unauthentic.

20. This objection if made, is denied For a son for religious merit (dharma-putra) is not admitted, as [such admission] would be at variance with the enumeration in this text,—"Of the twelve sons of men whom Manu sprung from the self-existent has named, &c." ;—or even were such son admitted as he is not classed in the series of heirs, (the wife and the rest,) he could not participate in a share : and the connection of sapinda, not being possibly implied to forbid it would be unmeaning. Therefore, that text regards only the son: since it propounds participation in a share.

Refuted.

21. Now of the text in question this is the meaning. 'For the sake of religious merit',—(that is, for the sake of acquiring religious merit obviating the exclusion of the man himself from heaven,) after being adopted 'like the real son,'—(that is as substitutes for the same;) by the adopter, 'under the family name of each respectively',—(that is, even under a family name, different with reference to the natural father,) sons who are reared : in these merely participation alone in the heritage and [the oblation of] the funeral cake of the adopter vests : not connection as sapinda. Therefore, it is established that in the text in question the connection of the son given as sapinda to the adopter is not declared ; but on the contrary his connection as such extending to the seventh degree inclusive to the family alone of the natural father.

Explanation of Devala's text.

22. But does it not follow on account of proximity, that sons mentioned in the plural number required by the repetition of 'tat,' are designated by that pronoun, not on account of remoteness, the adopting party becoming possessed of male issue ; for,—it would be improper to apply to such, whose plurality is dubious, the repetition :—the pronoun, 'tat' designating (as it were) a person not immediately obvious, cannot bear an import in the sense of 'atma' (self):—and the possessive pronoun 'sva' (own) denoting the person immediately obvious, only would have been proper.

Opponent's argument, that sons are alluded to by the pronoun in Devala's text.

23. Should this be alleged : we assert the contrary. According to the maxim,—"The application of pronouns is to the object presented to the mind,"—the adopting

Refuted.

Annotations.

22. Required by the repetition of 'tat.'] This pronoun is repeated to denote that the reference to the object is made distributively it follows, therefore that the object must be in the plural.

Not on account of remoteness, the adopting party.] In Devala's text, though not expressed, the adopting party is understood as the agent to the verb in immediate construction with 'are reared,' in the passive voice ; and is consequently more remote than 'sons,' from the phrase 'tat-tat-gotrena.'

To such whose plurality is dubious.] The agent of the verb 'rear' not being expressed : its plurality or otherwise is not certain.

party is indicated by the pronoun 'tat' ('of each, &c.'). For the being the object presented to the mind, depends on being principal: and the being principal, proceeds from being the object to be perfected, or from relation to the effect. Now the father is principal by reason of being the object to whom accrues the effect consisting of heaven, which in virtue of such text as,—" by a son he conquers worlds, &c."—is to be produced by an act, the instrument of which is a son: and because by thoroughly considering this and other texts,—" the rights for the father consisting of oblations of food, and libations of water to be performed by the son, &c."—it appears the father is the object to be perfected as such by rites of oblation of food and so forth, the agent of which is the son.

And analogous reasoning from the Mímánsá cited.

24. Thus. " He mixes coagulated milk (dadhi) in boiled milk: that is a curd of two-milk whey (ámikshá), an oblation for the Vaiçvadeva set of divinities." It being settled, that the curd here alluded to by reason of being formed of mingled coagulated milk and milk, is an altered mode of what was intended to be offered: should it be alleged by the opponent that the coagulated milk is what is altered; since that alone designated by the pronoun 'that,' (for, the coagulated milk mentioned in the accusative case, is principal by reason of the milk mentioned in the locative being secondary,) refers to the divinities:—it is thus demonstrated by the supporter of the right opinion, that the milk is what is altered. As the milk is pervaded by the coagulated milk, although the object [of the verb 'mixes'], by reason of this consequent result of the import of the passage,—('he perfects milk by coagulated milk,') the milk alone is principal. Therefore, this only designated by the pronoun 'that,' relates to the divinities. Analogous to this, in the case in point also, it is correct to say, that since the father is principal, by being the object to be perfected, he only is designated by the pronoun 'tat.'

Annotations

24. He mixes coagulated milk (dadh) in boiled milk.] The author alludes to and enlarges on a portion of the 9th topic of the 1st section of the 4th book of Jaimini's Mímánsá. In the Vedas, this passage occurs. 'He mixes coagulated milk, (dadhi) in boiled milk, that is a curd of two-milk whey (ámikshá), an oblation for the Vaiçvadeva set of divinities, and whey for horses [on particular ceremonies."] In the part of the Mímánsá specified, it is proposed for a discussion whether the curd and whey, viz. the grumous and serous parts of this compound are collectively the object of the act or only the curd. Since both are equally produced by the act of admixing the coagulated milk. The first supposition might be inferred: it is however thus demonstrated, that the curd, formed as mentioned is the object proposed by the act, and that the whey is incidentally or subordinately produced. The curd it is urged is no other than the milk itself to which the coagulated milk is admixed, as is argued,—1st, from the use of the pronoun 'that' which indicates the boiled milk, for that is principal,—2d, from the import of a preceding portion of the Vedas referring to the oblation of curd produced by the process in question, which recites, "consume this milk,"—3d, from the analogy of taste, the curd and milk both being sweet: whereas the whey is sour.

Argument against the position, that the adopted is not related as sapinda to the adopter, refuted.

25. But should it be objected, if the son given, bear not the relation of sapińda to the family of the adoptive father; why should not his marriage take place therein? Excellent! we reply,—on account of his belonging to the same general family.

Further objection of opponent.

26. Then his marriage might take place with the offspring of the adopter's sister and so forth, for connection by identity of family and that of sapińda are wanting: nor do we at present find any text prohibitory of this. On the contrary, there are passages in favour of it such as, "Let not any one marry the daughter of that person, who taught him the sávitrí incantation: but marriage in the general or also in the peculiar family of that person, does not however occasion an offence." Yet, this is not an intended consequence: for, it is at variance with the universal practice of good persons, uninfringed, and by holy writ unforbidden. Therefore, what reason is there against marriage in such instance.

Annotations.

26. 'Sávitri' incantation.] This (otherwise called the Gáyatri,) is a verse of the Vedas, the mental recitation of which is an essential part of the daily observances enjoined the Bráhman to whom, when invested with the characteristic thread, it is taught with an injunction of secrecy. For the insertion here of this mystical verse, the curious reader is indebted to Rám Mohan Ráy, an enlightened Hindu distinguished by learning, but still more by the liberality of his sentiments, well evinced in the different publications which have emanated from his pen.—The text of the Sávitri runs thus:

Om! Bhur-bhavah-svah!

Tat-savitur-varenyam bhargo devasya dhímahi dhiyo yo nah prachodayat.

This may be translated,—"Glory to the Almighty in his triple character of the preserver, the destroyer and creator:—to the earth, sky and heavens—We contemplate that desirable light of the resplendent sun, who directs our intellects."

On this Rám Mohan Ráy, makes the following comment founded on interpretative passages from the Vedas, Manu and Yájñavalkya,—"Om! This mystical word is composed of the letters a, u and m, and is the emblem of God the author (as respectively intimated by those three letters) of preservation, destruction and creation.—Those letters likewise express that with respect to sentient beings, he rules the states of waking, dreaming and sound sleeping.—This word is called the Pranava or high praise.—'Bhur-bhavah-svah'—These words signify the earth, sky and heavens.—This is called the vyahriti, or universe, or all comprehending.—These (the pranava and vyahriti) are prefixed to the Gáyatrí, to make it complete. The three combined imply that,—we contemplate God, the author of preservation, creation and destruction,—the support of sentient beings, in the states of waking, dreaming and sleeping,—who comprehends the universe,—and is that desirable inherent light of the resplendent sun; that, as our internal light directs our understandings towards righteousness,—or in short, that God is all in all."

27. On this subject, it is replied by a certain author. "She who is not connected, as sapinda to his mother and father, (pitus) and not belonging to the general family of either, is approved amongst twice-born men, for espousal and connubial intercourse."* As for the mentioning a female not connected as sapinda to the father, in this text of Manu, in which [if the son of the body were regarded,] it should have been expressed,—'not connected as sapinda to himself'—that is only, to declare, that the marriage of an adopted son, must not take place with a woman connected, as sapinda, to the adoptive father: otherwise, the marriage of a bridegroom, the eighth in descent from the common ancestor, (his kindred being through his father) with a bride, the sixth from such ancestor, (her descent being through her mother) might not take place: for being related as sapinda, to the father of the bridegroom, her non-connection as such is wanting. But what was required, would not thus result: for, it would be at variance with the practice of good persons, and texts of every code of law; such as: "Beyond the fifth

A reply to which by a certain author, is recited.

Annotations.

27. Otherwise]. That is supposing that the real legitimate son were referred to, and not the adopted son.

Her descent being through her mother]. A restriction to this effect, was necessary: for, if a female did not intervene between the proposed bride and ancestor common to her, and the bridegroom, they would belong to the same general family, and their marriage consequently illegal, as will appear from the following note.

Such as: "Beyond the fifth, &c.] The passage here cited is from Yájñavalkya. The following is a translation of, the text where it occurs, and those immediately preceding and following. "Having given a present to his preceptor, he should perform the ablution [prescribed for the conclusion of studentship]: Having completed a Veda, or the acts of merit, called 'vrata:' or both; persevering in holiness, let him marry a perfect woman: one not previously married or deflowered: beautiful: unrelated to him as sapinda: his junior: free from disease: having a brother: born in a family not following the same Rishis (or patriarchal saints). Beyond the fifth and seventh degrees, on the mother's side, and the father's side, respectively, [the relation of sapinda ceases]. From an illustrious race of Bráhmanas well versed in holy writ, of which ten ancestors are known, [the bride must be taken], but not from one affected by an infectious disorder, though free from reproach." In the Mitákshará the following comment on the quoted part of these stanzas occurs. "'On the mother's side (matritah)', —that is,—in the line of the mother, after the fifth degree. 'On the father's side'—that is,—in the line of the father, after the seventh degree,—'the relation of sapinda, ceases' as is understood; and this term 'sapinda', though on the force of kindred, applying to every degree, refers only to those restricted: analogous to the words, 'nirmmathya' 'pankuja' and the like.† Accordingly, there are six sapindas in ascent, the father, and the rest: and six in descent, the son, and the rest, and the man himself, is the seventh. Should the line diverge, the enumeration should be made until the seventh degree, commencing from whence the direction of the line varies. This is applicable to every case."

* Manu 3, 5.

† Of these words, the first is used to denote fire produced by friction on the actual occasion of being required for a sacrifice: the second, to signify the lotos: they do not, as might be supposed from their etymology, signify respectively any fire kindled by friction, and any aquatic plant, (v. Mimánsá of Jaimini) 1. 4, 10.

and seventh degrees, on the mother's side, and the father's side, respectively, (matritah-pitritas-tatha) [the relation of sapinda, ceases]." Nor can it be alleged, that this objection is equally applicable to the adopted son also; since it follows, such son, the eighth, and a damsel, the sixth, in degree, by reason of her being related, as sapinda, to his father, may not intermarry. For, under this text, subsequently recited "the relation of sapindas ceases with the seventh person,* &c. &c.") the father of the adopted son, the seventh in descent, not being related as sapinda, to the common ancestor,—by reason of the bride, the sixth in descent, consequently not being so connected to him,—such bride, the sixth and the father of the bridegroom, the seventh, are not mutually connected as sapindas: as has been already declared. Therefore, there is no inconsistency in alleging that this text even is decisive of the relation of the adopted son as sapinda [to the daughter of his adoptive father's sister and so forth]."

This reply refuted as very erroneous.

28. This is very erroneously stated: for, either of these alternatives, [one of which under the foregoing construction must be assumed] is admissible. Accordingly, is the text in question decisive of the relation of sapinda, of an adopted son only; or, of both the adopted son, and the real legitimate son? The first proposition is not correct: the text may, in two ways relate to the son-given; either from such son being the subject treated on, or the text having the same meaning with a special text conclusive of the adopted son's relation as sapinda. Now, in this case, there is not either of these two causes, since they do not appear. Besides, did the text in question intend the adopted son, the term 'father' by a secondary import, would mean the adopting father; and that is not intended; for, it would be at variance with the rule of logic, "In a precept, the sense of a term is not secondary." Nor, also is the second position accurate, since it is forbidden to attach both senses to the word 'father.' Nor is there as in this instance,—"There are fish and a cow-house in the Ganges"—any proof, arguing the implied intent of a secondary sense. Therefore the text in question is relative alone to the son of the body: for conception and so forth are the subjects treated on, and it is declaratory of the same effect, as this and other texts: "Beyond the fifth and seventh degree, &c."

Annotations.

28. As in this instance,—"there are fish and a cow-house in the Ganges."] Here the word 'Ganges' in its primary sense obviously signifies the river, so called, in which the fish exist, and in a secondary sense, the bank, on which the cow-house stands.

* Manu 5, 60.

The argument also in the reply, that the text of Manu cited does not refer to the legitimate son, is founded in a mistake.

Yájñavalkya, cited.

Gautama.

29. Neither can the objection specified be alleged,—viz. that, if the text regard the real legitimate son, it would follow, that a bridegroom the eighth, from the common ancestor, and a bride the sixth, might not intermarry, on account of her non-connection to his father, as sapinda being wanting. For, that is no real objection from its being founded in a mistake of the ablative case, (pituḥ) for the genitive [inflected the same.] Accordingly, in this sentence "mátritah pitritas-tatha" ('on the mother's side, and father's side, respectively')—the grammatical affix 'tasil' conclusive of the case being the ablative, is used by the chief of saints. Should a doubt arise from this affix also, being used as the inflection of every [oblique] case,—the ablative is rendered certain by this text of Gautama,—"With the kinsmen on the side of the father, (pitri-bandhubhyaḥ) (viz. of the procreator) beyond the seventh degree, and with those on the mother's side (mátri-bandhubhyaḥ) beyond the fifth, &c. Thus, that noticed is not any satisfactory reply, another must be declared.

Another reply propounded.

30. This others have propounded—"Sages declare these eleven sons (the son of the wife and the rest,) as specified to be substitutes for a son; for, the obsequies would fail."* Since in this text, the son of the wife and the rest, are declared to be substitutes for the real son: by the maxim of logic,—'the substitute possesses his virtue,—the whole virtue of the legitimate son being inferred in them, the exception [from marriage with them] of a female sapinda of the adoptive father must follow.

And refuted.

31. This is not accurate: for, as the representation of the relation of sapinda forbidden by this passage—"the relation of sapinda is not included"—Would be impossible:

Annotations.

29. The ablative case is rendered certain by this text of Gautama]. The word 'bandhubhyah' occurring in the phrases 'pitri-bandhubhyah,' and, 'mátri-bundhubhyah' can only be the fifth or ablative case.

31. "An animal, &c. &c:"] Allusion seems to be made to the 2nd topic of the 1st chapter of the 12th book of Jaimini's Mimánsá, or perhaps to the 2nd topic 8th chapter of the 10th book of the same work.—Whatever may be the object to be offered, generally speaking in sacrifices the same rules are observed, and essentials necessary. It is however provided in the Vedas by the sentence quoted, that where an animal is the offering, the two 'ájya-bhága' sacraments are not to be performed, this term denotes a rite, where clarified butter (ájya) is presented, and is applied more particularly to two ceremonials of a sacrifice where that article is presented, with recitation of two prescribed mantras or incantations. By the passage in question, the performance of these two ceremonials, in the case of the oblation of an animal being interdicted in alluding to such a sacrifice, there would be no occasion to except the ceremonials in question; for, in such case their non-performance being especially provided for, there would be no ground for inferring their observance.

* Manu, 9. 10.

that not being obtained the exception of such female could not take place. Hence it is disproved that the exception [from marriage] of the female sapinda of the adoptive father is established from the representation of the virtue of the real legitimate son [existing in the substitute] by reason of the name of 'son.' For, analogous to the case exemplified in the passage,—" an animal being the object he performs not these two [rites."],—the representation of the relation of sapinda which is forbidden being impossible, the exception could not subsist.

Correct solution of the question in 26.

The relation as sapinda of the adopted to the adopter's family is founded only on express texts.

Hemádri propounds it as extending only to three degrees.

32. Therefore, not being otherwise inferrible, the relation of 'sapinda' in the peculiar family (kula) of the adopter as founded only on express texts of law must be admitted. This is declared. Relation of sapinda is of two descriptions;—through consanguinity and connection by a funeral oblation. Of these the relation as sapinda arising from consanguinity, being obviously barred in the case of the adopted son,—Hemádri, (after having declared that relation as arising alone from connection by a funeral oblation, and consanguinity) has determined the relation of sapinda of sons given, and the rest in the family of the adoptive father as extending only to the third degree.

So also Kárshnájini.

33. And so also Kárshnájini—" As many as there may be degrees of forefathers: with so many their own forefathers, let sons given and the rest associate the deceased: in order their sons with two forefathers, their grandsons with one. This is general: the fourth degree is excluded: therefore this is [a relation of sapinda] extending to three degrees."

Exposition of his text: of the first part.

34. This is the meaning of the text.—According as the deceased adoptive fathers may be sons legitimate, adopted absolutely or of two fathers; as many as there may be degrees of forefathers,—three or six;—(that is, in the first of these cases, three,—viz. the natural father, grandfather and great-grandfather [of the deceased],—in the second, three—viz., the adoptive father, grandfather and great-grandfather,—in the third three;—the adoptive father and other two,—and three,—the natural father and other two,—) with so many not exceeding six, [as the case may be,] let sons given, and the rest associate their acquired fathers.

Force of the epithet 'their own,' and

35. The epithet " their own" is used for the purpose of suggesting that all these as many as three or six, (as the case may be) who are forefathers of the adoptive father are divine objects, contemplated in the cere-

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mony of 'sapiṇḍa-karaṇa', performed for the adopted son, by his own son. And, hence it being deduced, that the forefathers of the adopter are in fact divine objects in the ceremony of 'sapiṇḍa-karaṇa' performed for the adopted son: the author propounds a distinction; "In order their sons with two [forefathers]"—that is with two of three, and four of six.—On this principle let the grandsons of the adopted son perform the 'sapiṇḍi-karaṇa' for their own father, with one (the father of the adopter, from amongst three forefathers of the adopter of their own grandfather: or in the case of [such adopter] being sons of two fathers, with both grandfathers of their own grandfathers. The author points out this rule in respect to the adopted son and his issue likewise.

Import of the sentence, 'this is general.'

36. 'This is general:'—that is, this ceremony of 'sapiṇḍi-karaṇa,' where the adopted son, and his son also are sons of two fathers must be equally performed [by their descendants] with both sets of forefathers.

The sentence 'the fourth degree is excluded' why subjoined.

37. But, if this is the case: the 'sapiṇḍi-karaṇa' for his own father, the grandson of the adopted son being performed by the great-grandson of that person, with these three,—the son of the adopted, the adopted, and the adopter,—no alliance by a funeral oblation with the three forefathers of the adopter would exist;

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his adoptive father would not be included in a set of three ancestors, to each of whom, at the sapiṇḍi-karaṇa for the adopted son, to be performed by his son, an oblation of food and so forth, (as specified in the preceding note) is to be consecrated; unless any of the nearer ancestors survived such adopted son. But either of these great-grandfathers would be contemplated amongst the remoter ancestors, denominated 'lepa-bhák,' to whom are offered the wipings of the oblations of food.

The ceremony of 'sapiṇḍi-karaṇa'] or rite of associating the deceased with the manes of departed ancestors: it should strictly take place on the anniversary of the day of death, but is more usually performed at the funeral repast of the 13th day from the decease: previous to its performance the deceased is not denominated a 'pitṛi' or departed ancestor. This rite consists in the following ceremonials. Four vessels called 'puti' each of two leaves are prepared. These are filled with water for the feet, scented wood, flowers, sessamum seed, and consecrated severally to the deceased, and three nearest departed ancestors on the father's side. The contents of that consecrated to the deceased with the exception of a small part is poured out in equal portions into the other three, with recitation of the two prayers commencing "Ye samánya, &c." Then the observances of the ekodishṭa and párvana rites, with the variations necessary take place, the same prayers being recited:—that is,—those of the former rite are performed in honour of the deceased, and those of the latter in honour of the three ancestors abovementioned. Of the four funeral cakes which would be thus offered severally to the deceased, and the three ancestors in question, that consecrated to the deceased is divided into three parts, one of which is admixed with each of the other three cakes. It is from this that the ceremony takes its name. The portion of the contents of the 'púti' consecrated to the deceased, which is reserved, is for the purpose of being presented to deceased, amongst the other articles, the oblation of which is part of the ekodishaṭa rite required to be performed in his honor. For a description of the ekodishṭa and párvana rites, v. supra. note to § 72 of Sect. IV.

as not one of them even is included. Accordingly, the author adds,—"the fourth degree is excluded." The meaning is,—when any person may perform for his own father, the 'sapindi-karana,' he should do it with three, the father and other two ancestors of deceased, not with the fourth.

The reason for subjoining, and the import of the concluding part 'therefore this, &c.'

38. But in the instance of the real legitimate son is not thus the performance of the sapindi-karana [for his father] with three forefathers only, established by holy writ? Being established then by this alone, for what purpose is the inconvenience of introducing another express text [to declare it]? Anticipating this objection the author subjoins: "Therefore this," of adopted sons is a relation of sapindas extending only to the third degree being productive of uncleanness and disability of marriage, and consisting in connection by funeral oblations. It is not such relation including the seventh degree, declared in the subjoined passage from the Matsya-purána: for this being of a general nature is excepted by the special rule [in the case in point]—"The fourth in degree, and the rest are partakers of the wipings [of the oblations]. The father and the rest are participant of the oblation. The seventh in descent is the giver of the oblation. Of these the relation of sapinda extends to the seventh degree."

The author of the Sangraha confirms.

39. Intending merely this, it is said by the author of the Sangraha. "The relation as sapinda of adopted sons, extends to three degrees in the family of the natural father: and like that, in the family of the adopter. This is a rule of law." The mention here of relation as sapinda in both families, is with reference to the son of two fathers, for, it has been shewn that the ceremony 'sapindi-karana' for such son, is performed with two sets of three forefathers. Of the absolutely adopted son, the relation of sapinda in the family of the adopter, consisting in connection by funeral adoptions extends to three degrees: in the family of the natural father, arising only from consanguinity, it extends to seven degrees. To enlarge would be useless.

Explanation of a part of Vrihat Manu's text, cited in § 9, appositely introduced.

40. "Like this, the general family"]. 'Like this,'—analogous to the relationship as sapinda the general family likewise [of sons given and the rest,] is that of the natural father who contributes the seed; not only of the natural father however, but also of the adopter. The general family of sons given and the rest, is that of him also, who is the adopter of such son given and so forth. By this the relation of sapinda is shewn to vary from the general family. Thus, that relationship is in the line of the natural father only, not so the general family; on the contrary, this is that of both [fathers] even. This likewise does not apply to the general adopted son: but is relative to the son of two fathers, a particular adopted son.

41. Accordingly sons given and the rest, [who are sons of two fathers] are of two descriptions: Those absolutely sons of two fathers, and those incompletely so. Of these, those are named absolute 'dvyámushyáyaṇas' who are given in adoption with this stipulation,—'this is son of us two' (the natural father and adopter). 'The incomplete 'dvyámushyáyáṇas' are those who are initiated by their natural father, in ceremonies ending with that of tonsure, and by the adoptive father in those commencing with the investiture of the characteristic thread, since they are initiated under the family names of both even, they are sons of two fathers but incompletely so. Should a child directly on being born be adopted; as his initiation under both family names would be wanting, he would partake only of the family of the adopter.

Dvyámushyáyaṇas are of two descriptions, such as are absolutely so and otherwise.

42. Intending all this, Satyáshádha says,—"of absolute 'dvyámushyáyaṇas' of both &c." By this compendious rule, having declared the connection of absolute dvyámushyáyaṇas to the patriarchal saints in both families, the author by another aphorism commencing,—"Of sons given and the rest like the dvyámushyáyaṇa, &c."—ordains the same connection with respect to those incompletely dvyámushyáyaṇas. Now this is thus explained by Savarasvámí. 'Treating on dvyámushyáyaṇas, the author mentions those incompletely so, "Of sons given, &c." Unto those only not to issue beyond, [does the connection to both families extend.] By the first only the initiatory rites [ending with tonsure are performed.] If by the adopter [the family of the adopted] is that of the latter: on account of priority. From this alone [the same is the case] in respect to a descendant beyond. So also those, who are affiliated by a descendant of the same general family, (as for instance a nephew, by an uncle,) are of the adopter's family only.

Satyáshádha intends the same—Explanation of an aphorism of his by Savarasvámí.

43. The meaning of this explanatory passage is this.—He only is connected to both families, who has been initiated under both family names; not descendants beyond. In reply to the question, as to the cause of connection to the family of the natural father, the author says "By the first &c." 'The first';—that is, the natural father: [the cause is,—] on account of the initiatory rites, being performed by him only.—Now the initiatory rites, [alluded to,] are those ending with tonsure: on account of this passage from the Káliká puráṇa.* "Oh Lord of the earth, a son having been regularly initiated under the family name, of his [natural] father, unto the ceremony of tonsure inclusive, does not become the son of another man." This has been already before explained. He does not become exclusively, the son of another: but, is a dvyámushyáyaṇa, or son of two fathers.

Exposition of the meaning of this explanatory passage.

* V. Supra Sect. IV. § 22.

44. Anticipating a question, as to what would be the case, were the initiation performed by the first; the author adds,—"If by the adopter, &c." If every initiatory rite from that on birth, or even those commencing with tonsure, be performed by the adopter only, the family [of the adopted] is of the latter,—that is,—of the adopter only. For this, a reason is subjoined:—"on account of priority"—meaning,—from precedence in the performance of initiation.

The same continued.

45. The author declares the family (required to be known,) in the instance of the issue of the dvyámushyáyaṇa, and that of the [absolutely] adopted son:—"from this alone"—from the initiation taking place under the family name only of the adopter in both instances even his, is the family of the descendants beyond.

The same continued.

46. The author alludes to the adoption of one belonging to the same general family,—"so also, &c." That is,—if the natural and adoptive fathers belong even to the same general family, the distinctive appellations are fixed by the adopter only for the adoption, and initiation are performed by him.

The same concluded.

47. The text, ("A given son must never claim the family and estate of his natural father, &c.*) must be considered applicable to the case where every initiatory rite, from that of birth is performed by the adopter only: but the son given, and the rest who are absolute dvyámushyáyaṇas, belongs to both families; on account of this passage of Parijáta;—"Sons given, purchased and the rest who are sons of two fathers, may not marry in either family even: as was the case of Sringa and Saisira."† 'In either family'—in the family of the natural father, and in that of adopter.

A text of Manu, barring the relation of the son given to the family of the natural father does not refer to the son of two fathers, on account of a text of Parijáta.

48. With respect to the sons given, and the rest being sons of two fathers, this text and that of Satyasháḍha, commencing ("of absolute" "dvyámushyáyaṇas") are authority. With the same intent it is declared also in the Prav[illegible]ra-manjari:" "For the most part sons given purchased and made the son of the appointed daughter and so forth belong to both general families with connection to the patriarchal saints of each." From this alone on the occasion of the marriage of those, appertaining to two families both families with each of which their connection to the patriarchal saints, is involved must be avoided.

Whose text, that in § 42, and the one here noticed, prove that adopted sons may be sons of two fathers.

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† V. supra note to Sect. 1 § 31.

The 'çákhá' is that of the adopter: as shewn by Vasishtha,

Explanation of his expression 'svá-çákhá-bhák.

49. The çákhá or peculiar branch of the Vedas is that of the adopter only. Vasishtha declares so:—"Sprung from one following a different 'çákhá' (or branch of the Vedas) the given son even when invested with the characteristic thread, under the family name of [the man] himself, according to the form prescribed by his peculiar "çákhá" becomes participant of the duties of such çákhá; (sva-çákhá-bhák"). That duty in which his peculiar, (that is the adopter's) çákhá prevails, is a duty of such çákhá; in this he shares or is "participant, &c." Such rite only which is prescribed by the çákhá, of the adopter must be performed by him. This is the meaning.

The maternal grandsires of adopted sons are in the line of their adoptive mothers.

50. The forefathers of the adoptive mother only are also the maternal grandsires of sons given, and the rest: for, the rule regarding the paternal, is equally applicable to the maternal grandsires [of adopted sons].

A passage of Hemádri to the contrary effect, refuted.

51. As for what is said by Hemádri that the precept enjoining the performance of a funeral repast in honor of the maternal grandfather, refers to the natural maternal grandfather; that is inaccurate: for it is at variance with the passage—"of him who has given away his son, the obsequies fail."* Nor is the capacity of the maternal grandsires as givers wanting: for by reason of their affording their assent to the gift (as appears from this passage—"having convened his kindred, &c.")—they also are parties to the same. Besides, by this passage—"the funeral cake follows the family and estate"†—the family and estate are declared to be the cause of performing the funeral repast; and the estate of the maternal grandfather also like that of the father lapses from the son given. His incapacity to perform a funeral repast in honor of his original maternal grandfather is properly declared.

Hemádri too has elsewhere advanced the other position.

52. Accordingly, Hemádri himself, from not being satisfied with that [just stated], has advanced the other position: "In the same manner as for the secondary father, a funeral repast must be performed in honor of the secondary maternal grandfather and the rest."

Which is shewn to be accurate by several arguments.

53. And this even is proper. The adopted son as substitute for the real legitimate son, being the agent of rites performed by a legitimate son, it follows that he is the performer of funeral repasts, the objects of which are the manes in honor of whom a legitimate son per-

Annotations.

53. Of the Asuras and the rest.] That is,—of the Gandharvas: of the Rákshasas; and of the Pisáchas. Where she espoused, in either of the four superior forms

* 9, 142.

† 9, 142.

forms such repasts. For:—without difference, relation to the father and other sires of the adopter obtains; in the same manner as relation to the general family the çákhá, the family-deity and family-rules of that person:—the term 'son' is used without restriction in these and other passages;—"Fathers desire sons." "The son who shall go to Gaya, &c.":—and further: if the adoptive mother be espoused according to the forms of marriage of the A'suras, and the rest, by reason of the father only of such acquired mother, being the maternal grandfather to be contemplated in the ceremony of sapinda-kárana propounded in texts similar to the subjoined; it is proper that his manes should be consecrated in a separate funeral repast. "At the close of the year by sons, the father must be associated with the paternal grandfather: the mother must be associated with the maternal grandfather. Thus saith the illustrious Yama."

And thus the adopted son does not incur the offence of parivedana as declared by Gautama.

54. Accordingly sons given and the rest do not incur the guilt of a 'parivitri' and the like: for a text of Gautama recites;—"By marriage and the establishing a consecrated fire, the offence of 'parivedana' does not attach to a half brother, a son given and the son of a paternal uncle likewise."

Exposition of his text.

55. 'To a half brother.] On the marriage and so forth of either of two brothers by different mothers, the offence denominated 'parivedana' is not incurred. This is the meaning. 'A son given'] It is meant,—that although there be an elder brother in the family of the natural father, the adopted son is not (should he marry and so forth,) a 'parivitri;' nor also by such previous marriage and the like of the younger, is the elder a parivitta or person passively implicated in the criminal acts alluded to. 'The son of a paternal uncle.'] On the marriage and so forth of the 'kshetraja,' son of a brother begotten [on his wife] by her brother-in-law or on the same of the legitimate son of such brother-in-law, the guilt of being a parivitta parivitri and the like, is not incurred by such son of the brother-in-law or such 'kshetraja' son respectively. This is the meaning.

Annotations.

of marriage.—viz. those of—Bráhma,—the Devas,—the Rishis—and the Prajápatis—at the ceremony of Sapinda-karana performed for her, she would be associated with the paternal grandmother and so forth, and not with the maternal grandfather and the rest.

54. The guilt of a parivitri] or offence of parivedana; this consists in a younger brother marrying before his elder, or establishing a consecrated fire, while the elder may not have done the same.

Gautama's expression 'the son of a paternal uncle,' does not refer to the mere nephew.

56. 'The son of a paternal uncle' in the general sense of the terms is not meant: for one adopted is suggested by the expression 'a son-given;' and by reason of there being no grounds for supposing an unadopted [nephew to be referred to] (as the prohibition [against previous marriage, and so forth,] does not apply to him,) there can be no rule for exempting him from the same.

Objection refuted.

57. Nor must it be argued that from the particular authority in question, the filial relation of a brother's son though unadopted is established; for this is obviated by the several objections before stated:* viz. by, where of ten brothers five were without male issue, and five had each ten sons, it would result that the brothers destitute of male offspring would severally have fifty sons; and it would follow that the fifty sons would each have ten fathers. Therefore the interpretation given only is accurate.†

SECTION VII.

For the legitimate daughter, there may be the different substitutes, corresponding with those for the son.

For the legitimate daughter, there may be substitutes as for the legitimate son.

Reason.

1. As on defect of the legitimate son, so on defect of a legitimate daughter likewise, daughters of the wife and the rest are substitutes on account of the rule of logic, "on defect of the principal a substitute, &c." Now she is principal by reason of her being the means of completion in the precept enjoying gift and so forth. And a daughter produced according to the precept

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Annotations.

57. Nor must it be argued, &c.] The offence of parivedana, is incurred by those bearing a mutual fraternal relation. The text of Gautama exempts those specified from the operation of this rule. If his expression 'son of the paternal uncle,' be considered to refer to the mere nephew, there would be room to suppose that a nephew though unadopted bore filial relation to his uncle.

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* V. Supra, Sect. 2, § 63.

† In this place the following passage is contained as part of the text, in some MSS. though omitted in most. "Also the articles presented at the funeral repast, in honor of a kinsman of the adopter, are not to be given to the adopted, nor the articles presented at a funeral repast for a kinsman of the adoptive, or natural father, to the son of two fathers: on account of this text, cited by Hemádri and Parijáta;—"He should not cause to be given to a near or distant kinsman, the oblation at a funeral repast: in the same manner he should not present with food at the funeral repast of his father, one having the same set of patriarchal saints." The 'oblation at a funeral repast' is what is offered on that occasion."—This passage may accurately belong to this section treating on the rules relative to the adoptive son.

directing conjugal intercourse at due season is such means; in the same manner as rice and so forth acquired according to the rules of acquisition are the completive means of a sacrifice.

Issue, indifferently male or female is the object proposed to be produced, under the rule regarding connubial intercourse.

2. Accordingly it appears from the argument exemplified in the instance of the sacrifice at night, that progeny (prajá) only deduced from revealed law and indifferently male or female is liable to be produced under the positive precept regarding connubial intercourse at due season contained in such passages as this commencing—"Let him approach in due season, &c."—and inferred from these and other confirmatory passages;—"We (women) obtain progeny from the approach of [our husbands], at due season."—"They obtained progeny from approach at due season."—For the etymology being thus; prajá, (progeny) from 'prajanayati' (one who procreates), by the word prajá a male or female being only possessing generative powers is intended; not one of the neuter gender: for such being produced from equality of the male and female seed is a monstrous production.

From not having issue a person sinks into hell.

3. Therefore should no issue (santati) such as is contemplated in the passage following, be produced, descent to a region of horror is ordained.—"Not having read the Vedas: not having produced issue: and not having performed the various sacrifices, a regenerate man desiring absorption falls to a region of horror."

Etymological import of 'santati' (issue) and 'apatyam' (offspring) occurring in the passage subjoined from which it appears these words intend a child of either sex.

4. What prolongs lineage, is 'santati' (issue) a synonyme of 'prajá' (offspring); for a passage of the kosha or vocabulary of Amara expresses: "prajá stands for 'santati' (issue) and 'jana' (people)." Thus is explained the word 'apatya' (offspring) occurring in the passage subjoined: on account of,—a text of Yaska which expresses,—"'apatyam' (offspring) that is, from whom there is exemption from falling into hell (apatana): or through whom one falls not (patati) into hell;"—and this passage of the kosha —"The synonymes signifying 'son' are—atmaja-stanayaḥ-sunuḥ-sutaḥ-putraḥ: all these terms in the feminine signify a daughter. The terms 'apatyam' and 'tokam' apply to the two sexes."

Passage cited in which 'apatyam' occurs.

5. "For the sake of offspring (apatya) were women created: woman is the soil; men, the sowers of the seed: to one possessed of seed must the soil be given; but one destitute thereof deserves not the soil."

From a passage of Yaska, it appears the

6. "Here 'pumán' (male) is 'purumán' (comprehending much): or its etymon, is the root puns (to cover, daub, &c.)"—Although by this passage from

word 'pumán' usually used in the sense of male may signify a person possessed of generative power, male or female.

Yaska, the word pun (male) signifies one knowing much;—still from this part of his passage in question—"or its etymon, is the root puns (to cover &c.)"—it must be interpreted as signifying persons both male and female possessing the procreative faculty.

And in the same manner 'putra' signifies a child, male or female.

7. Accordingly Yaska has shewn by the following passage that the term 'putra' there occurring signifies children of both sexes (mithuna). "That children male and female (mithuna) are heirs is declared by these two stanzas.—"From my several limbs, thou art distilled; from my heart, thou art produced. Thou art indeed self, but denominated son (putra): mayst thou live an hundred years.*"—Manu descendant from the self-existent hath declared at the commencement of the world,—without distinction that wealth is that of children (putra) male and female (mithuna)."

Objection obviated.

8. It must not be alleged that the term 'mithuna'† in the above passage intends the son and daughter-in-law; for the text—"From my several limbs thou art distilled &c."—would be impertinent; and the exclusion of the daughter from inheritance according to the doctrine of some mentioned in this passage would be incongruous. "Not daughters:—thus some. [But by me] the male is recognized as an heir: the female as an heiress.

The term 'putra' used in different passages cited, shewn to mean a child of either sex.

9. As for the term 'putra' (son) used in this and similar texts: "Heaven awaits not one destitute of a son (putra);" that also even signifies both sexes. For it is declared by Pánini in the following rule to be a complex expression (formed by the rejection of one term and retention of the other) denoting son and daughter. "The expressions bhratri (brother) and 'putra' (son) are severally inclusive of sister and daughter."‡ By this, is explained the term 'putra' (son) in such texts also as,—"By one destitute of a son, must a substitute for the same always be made, &c."

Examples will be cited indicating the adoption of daughters.

10. And, as conforming with this doctrine, the indication of the affiliation of a daughter, will be subsequently declared.§

Annotations.

8. And the exclusion of the daughter from inheritance.] If Manu, by the term 'mithuna' did not intend children male and female; but the son, and his wife, why in a corresponding passage of another Muni here subjoined, should mention be made of the exclusion of daughters, from inheritance according to the doctrine of some?

* Of the Vedas.
† Literally a couple, a pair.
‡ Pánini, 1. 2. 68.
§ V. infra § 30 &c.

Passages cited shewing the equality and analogy between sons and daughters.

11. Accordingly it is said,—"Equal to him, is the putrika-suta or daughter appointed to be son*"—"as a son, so does the daughter of a man, proceed from his several limbs," †—and,—"If by the inauspiciousness of destiny, a daughter should not be born; then that must be propitiated by the observance of rites, such as repasts in honour of the deceased, on the first day of the dark fortnight; in the same manner as the destiny for a son, by funeral repasts, and the like, on the fourth day of the same."

A passage seemingly conflicting, explained consistently.

12. "Thus approaching let him beget a son." As for what is suggested by this, that a son only is the object proposed to be produced in an act, the only means for completing which is the approaching: that is a recital of 'son,' intended to shew the commencing act of one desirous of male issue; the author having first determined a son,—one of the male and female children alluded to by the term progeny (prajá),—to be the fruit of the essentials (guṇa) mentioned in the same passage.

Essentials causing the production of male offspring, as specified by different authors.

13. And these essentials in this and other texts, ("thus, &c.") are explained by the holy saint Manu and the rest to be,—on a night whose date is an even number, predominance of the virile seed; and passiveness of the woman:—the moon being in an auspicious mansion:—the ceremony, 'punsavana,'—destiny and so forth.

Asvaláyana specifies essentials severally, conducive to the birth of male and female issue respectively.

14. It is explicitly propounded by Asvaláyana also, that in marriage, a son and daughter are the fruit of particular essentials.—"Let the man take the thumb of the woman repeating the portion of the Vedas—'I take your hand for your prosperity'—should he thus desire —'may my children be born males only;'—[let him take] the fingers alone: if his desire be for female

Annotations.

13. In this and other texts ('thus, &c.') The text of Yájñavalkya alluded to, is the following. "Thus approaching a passive woman, he should avoid the Magha and Mula constellations. The moon being in an auspicious mansion, let the man beget at once, a son, eminent in qualities."

The ceremony 'punsavana.'] A description of this ceremony and that denominated Simántonnayana occurs in the following note subjoined by Mr. Colebrooke, in § 28, chap. IX of his translation of Jimúta Váhana. "The first of the ceremonies here named [viz. the Punsavana] is celebrated at the close of the third month of pregnancy. It consists of the following prayer, recited by the husband addressing his pregnant wife, "Male are Mitra and Váruṇa (the sun and the regent of sea:) male are the twin sons of Asvini. Male are fire and air: may the child in thy womb prove male." The recital of this prayer is preceded by burnt offerings of clarified butter. The other ceremony mentioned should be performed in the fourth, sixth or eighth month of the pregnancy. The husband decorates his wife's head with minium, ornaments, and other articles: reciting divers prayers for a fortunate gestation."

* Yájñavalkya. † Vrihaspati.

issue, the hand in the middle: if both be desired, the hand in the middle, including the thumb."

His text illustrates a passage of Manu.

15. By this is explained the passage—"On the odd nights, daughters, &c."*

16. Therefore, in the same manner as the son by reason of being the means of procuring heaven as the agent in the performance of the funeral repast and so forth, is principal; the daughter also being the same by reason of her being the means of accomplishing the precept enjoying gift, the funeral repast, and so forth; on defect of her a substitute is proper.

Conclusion.

Yaska and other authorities cited, shewing benefit to be derived from a daughter through her son.

17. "'Duhitá' (daughter)—that is—'duro-hitá' or 'dure-hitá' one remotely benefiting; [derived] like 'dogdhá' (a milker)." By this analysis, Yaska shews that the daughter benefits her father by means of her son also —Manu likewise. "Now between the sons of his son and of his daughter, there subsists in this world no difference: for even the son of a daughter delivers him in the next like the son of his son." And in the Mahábhárata this speech of Gandhari. "This one daughter born after one hundred sons shall be mature. Hence I shall obtain words acquired by a daughter's son.—This is my persuasion."—In another authority also: Are daughters also real legitimate children of their father and mother? Formerly one falling, being upheld by a daughter's sons did ascend to heaven." —'By a daughter's sons,'—by the sons of Mágchadhi of the description denominated 'kánina' through funeral rites performed on the eighth lunar day and the like.

From which it is to be concluded that on defect of the real, a substitute daughter is to be adopted.

Objection obviated.

18. Consequently on failure of the real legitimate daughter, for the sake of obtaining the heaven procured by the daughter's son, the constituting the kshetraja and other adoptive daughters even substitutes is established. Nor is there any express passage of law as to there being a substitute for rice, [that it should be objected, that there is no express passage authorizing a substitute daughter.]

Annotations.

17. [Derived] like dogdhá (a milker)] Duhitá and dogdhá are equally derived from the root 'duh' (to milk,) by the subjunction of the affix 'trich' of which the 'ch' is servile.—To form the first of these terms, the augment 'it' is interposed, by the option allowed by a special rule: and in forming the second, such augment not being used by other special rules, certain permutations are undergone, by which the term dogdhá, is produced.

* Manu 3. 48.

The inference that the sister-in-law might thus be substituted for the wife as the brother-in-law is for the husband.

19. If this is the case; then in the same manner as on the death of the husband, the brother-in-law is a substitute; on the death of the wife the sister-in-law would be the same on account of her exact resemblance in point of consanguineal relation to the father-in-law, viz. her own father.]

Obviated.

20. This objection if made is inaccurate. The designation of 'Wife' is not in consequence of 'consanguineal relation to the father-in-law,' but from being the lawfully wedded spouse of the husband.' Now, the sister-in-law is not such: where such essential exists in younger wives, in that case one [according to the order of age] may be the substitute for the eldest. Accordingly the chief of saints hath negatively declared this. "Another wife of equal class [with himself] existing, he should not cause a religious act to be performed [by one of inferior class]; amongst several wives equal in class except the eldest, no other officiates in a sacred rite."

Of the five subsidiary daughters, who bear relation by blood to one parent, Manu propounds the production of the Kshetraja, description; as appears from explanation of his text.

21. Therefore it is established by reasoning even that these [the kshetraja and other secondary daughters], may be substitutes. Of these from amongst the following five subsidiary daughters, viz., the daughter of the wife that of hidden origin, the damsel's daughter, and that of the twice-married woman, Manu himself has propounded the production of the daughter of the wife;—"on failure of issue [by the husband] the desired offspring may be procreated either by his brother or some other sapinda on the wife who has been duly authorized."—It is meant by this that on failure of issue of both sexes, as offspring male or female is the object desired [that begotten by a kinsman] is a substitute for either as the case may be.

An express rule for the rest unnecessary.

22. As to the other four subsidiary daughters in question there is no necessity for an express rule for their production: for their existence proceeds from the inclination of individuals.

Their names correspond with those of the sons.

23. The names of these [subsidiary daughters], are only those adduced (v. § 21) corresponding with those of the sons: for the cause from which they proceed is the same even in respect to both.

These particular descriptions are substitutes for daughters by analogy.

24. And their being substitutes for the legitimate daughter is established from analogy even from their originating partially from portions [of the husband and wife]; in the same manner as wild rice (nivara), is shewn to be a substitute on defect of the cultivated rice which ripens in the rains (vrîhi). Now, such por-

tions are partial, because the connection being through portions of the wife only, relation through portions of the husband is wanting.

Objection that a daughter given, and the rest cannot be substitutes as no analogy applies to them.

25. Allowing however that by force of analogy the daughter of the wife and other four secondary daughters are substitutes for the legitimate daughter, —How are a daughter given, one purchased, a daughter made, one self-given and a deserted daughter, (no analogy applying) substitutes?

Over-ruled; an argument of analogy existing applicable to them.

26. This objection is invalid.—To these descriptions of daughters also analogy even does extend: since an exact resemblance exists through equality of tribe and so forth as intimated by the saint—"this law is propounded by me in regard to sons (tanayeshu) equal by class;"—and this passage was before explained* in treating on the substitute for a son.

Objection that the subsidiary daughters being equally from analogy, substitutes the order for succession, as provided for in the case of sons, could not be applied.

27. But admitting that the daughter of the wife and other four daughters from relation as containing portions of the mother—and the daughter and the other four from equality of class—are substitutes; still since there is no difference in their resemblance, how is the order [of succession] as provided for [in the case of sons] by this passage ("on failure of the preceding the next in order is heir &c."†) to be applied?

Over-ruled.

28. This objection is wrong: we reply,—by the greater worthiness of each successively. This Vishṇu declares—"among these the preceding successively is the more worthy." —Now worthiness is distinguished into what is temporal (drishṭa) and what is spiritual (adrishṭa). That which is temporal proceeds from relationship through consanguinity and the like: that which is spiritual from being purified and so forth. And the text in question intends a restrictive rule: in the same manner as such texts, as—"Should he not procure the 'Soma' creeper let him even admit the 'putika' plant, &c."

Reference, to the author's commentary on Vishṇu.

29. Further particulars may be consulted in the Kesava-Vaijayanti, my commentary on Vishṇu.

Indication in scripture of a daughter given.

30. Instances indicating the substitute for a daughter are found in the Puráṇas—Amongst these the recital to Dasaratha by Sumantra of the prophecy foretold by Sanatkumara in the Bálá-kanda of the Rámáyana is an indication of a daughter given.—"In the race of Ishvákú one very meritorious shall be born: by name the warrior Dasaratha: illustrious and constant in truth.—Great friendship shall

* V. Supra. Sect. II. § 23, &c. † Yájñavalkya 2, 133.

subsist between him and the magnanimous king of Anga; and he shall possess a daughter of exalted destiny of the name of Sántá. But the king of Anga (called Lomápáda) will be destitute of issue.—That monarch shall intreat the king Dasaratha thus:—"I am destitute of offspring; "Oh! versed in morality, let this girl Sántá of excessive beauty, with open heart be given me, for the sake of offspring."—Then, that Rájá Dasaratha deliberating in his mind shall give the girl Sántá to the sovereign of Anga. That king, having taken the damsel, (his desires being fulfilled,) with gladness of heart will quickly go to his capital—That potentate shall bestow the damsel on Rishya-sringa, &c." There also is this address of Dasaratha to Lomapáda, "Let your daughter Sántá, Oh! warrior king go with her husband to my city—an affair of importance has arisen." There is likewise the address of Lomapáda to Rishya-sringa;—"This king Dasaratha is my amiable beloved friend. For the sake of offspring for me, this beautiful girl was given by him to me who demanded her: O Bráhmaṇa, Sántá is most dear to me; as myself, Oh! sage he, this king is thy father-in-law."

Illustration.

31. In these quotations from the expressions,—"let be given"—"shall be given"—"having taken"—and 'given'—a rule for the gift is manifest. So it being premised, [that the king of Anga will be] destitute of issue, it follows, from the conclusion of his prayer ("for the sake of offspring") that the daughter given, resembling the legitimate daughter, is a substitute for issue.

Indication in scripture of a daughter purchased.

32. An indication of the daughter purchased, is found in Hemádri from the Skanda-puraṇá. "One even of a different family, having through gold, made the daughter of another, his own, is capable of bestowing her [in marriage,] according to legal form"—Also in the Lingapuráṇa—"After having conferred with the parents, having made his own a damsel, perfect and free from every defect: by the gift of great wealth, having brought her [to his house]: having presented her with new clothes of good quality: having adorned her with ornaments, let him honor her with scented necklaces.—He is first well to consider causes, their respective families, constellations and so forth: he is to study their respective dispositions and after having liberally gratified both, she is to be given by him to a Bráhmaṇa only, who is conversant in scripture, a practiser of devotion, one who hath notoriously read the Vedas, and a student of theology."

Illustration.

33. In these quotations, from the expressions—"having through gold made is own"—"by the gift of wealth, &c."—authority for the purchase, [of a daughter] is manifest.

Indication of a daughter made.

34. An indication of the daughter made, is found in the Haribança* where the offspring of Sura is enumerated. [The author] having thus premised,—"Ten males were begotten by Sura on the chief queen, the

* Or chapter of the Mahá-bharata, on the lineage of kings.

daughter of Bhoja' viz.—first Vasudeva the long-armed surnamed A'naka-Dundabhi &c."*—then containing,—" Next to him Deva-Bhága was born then Deva-Sravaḥ then Anavṛishti, Kanavaka and Vatsavána: after these Grinjena, Syama, Samíka, Gandúsha—and of him were five daughters:"—and having thus enumerated the five—" Pṛithu-kírtti Pṛithá, and also Srutadevá, Sruta-sravá, Rajádhidevi, likewise. These five were mothers of warriors,"—subjoins—" Kunti made Pṛithá his daughter: Páṇḍá married her: on whom was procreated by the god of justice the king Yudhishtíra well versed in morality."

35. In this quotation since by the verb 'made' the act of an agent even shewn: the female [the object] is a daughter made [kṛitrimá].

Illustration.

36. Also in the Padma-puráṇa, in the part treating on the Bhauma-vrata, or fast in honor of the planet Mars. " Formerly there was Sunandika, a Bráhmaṇa thoroughly read in the Vedas: his wife Sunandiká was barren; but extremely anxious [for issue]. No offspring was born to him: from continuing barren, [premature] old age came on. Himself having taken her [in adoption],—Suçílá who was the child of another, beautiful in form and born in the family of a Bráhmaṇa was educated by him: and that Bráhmaṇí, also cherished her in her house as her daughter: and she was given in marriage to the Bráhmaṇa Someçvara who then according to the form declared in the Vedas married her, &c. &c."

Another indication of the daughter made.

37. Here the specification of—" himself having taken"—indicates an instance of a daughter made: and the construction—was educated "by himself"—is not accurate: for as the agent to the vèrbs 'taking' and 'educating' is the same—as shewn by the past participle 'having taken'—it is established that the act of educating is by himself.

Illustration.

Annotations.

37. And the construction,—'was educated by himself.'—] The original recites,—'tena-nnya-syasuta-jata-Suçílá .....grihitvá-poshita-svayam.'—The author, wishes to shew that the extract quoted exhibits an instance of an adoptive daughter, of the description technically called,—"made by the man himself."—For this purpose, he construes 'svayam' (himself) with the past participle 'gṛihitva' (having taken): not directly with 'poshitá' (educated); which latter construction, is in fact less accurate, as the agent to 'poshitá' (educated) must be the same, as that to the past participle 'gṛihitvá.'

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* It is related that at the birth of Vasudeva, the drums of Indra, spontaneously played, whence the name A'naka-dundabhi, these word signify: in order, a small and large kettledrum.

38. An indication of the daughter self-given must be searched for in the other Puráṇas: One the daughter deserted occurs in this passage from, the first Parban of the Mahá-bhárata, reciting the conversation between Dushmanta and Çakuntalá. That hermit begot Çakuntalá on Menuká. Menuká having deserted that infant born on the bank of the Máliní river, on the delightful table-land of Himavat after having performed the necessary rites at that river repaired thence quickly to the assembly of Indra. The birds having seen that infant sleeping in the forest uninhabited by men and abounding in lions and tigers surrounded it on all sides with a view that the voracious devourers of flesh might not hurt the child. The birds then guarded on all sides there, the daughter of Menuká; and I (going to sip water) saw her sleeping surrounded in the beautiful uninhabited forest by birds. Having brought her thence I adopted her as my daughter. The maker of the body, the bestower of life, and he whose food is eaten these three in order are declared to be fathers in holy ordinance—Since she was surrounded in the desert forest by birds her name also was in consequence fixed by me Çakuntalá.* Thus recognize, oh! Bráhmaṇa my daughter Çakuntalá"—Being asked this he declared to the great saint to be my birth. Do you oh Lord of men regard me as the daughter of Kaṇva, I consider Kanva as my father: I know not my real father."

A daughter self-given indicated in other Puráṇas: one of the daughter deserted adduced.

39. Here, from the use of the expression—"having deserted"—authority for the deserted or discarded daughter is obvious. Hence, it is easy to establish authority for each, by instances appropriate to each respectively. It is useless to enlarge.

Illustration. And conclusion.

SECTION VIII.

On the mourning, and so forth, of, or for, the adopted son.

1. Next uncleanness [on occasions of birth, and death] in respect to the adopted son, is determined. That is not reciprocal, in the family of the natural father, on account of the text of Manu. "A given son, must never claim the family and the estate of his natural father. The funeral oblation follows the family and estate: but of him, who has given away his son, the obsequies fail."

There is no reciprocity of uncleanness in the case of the adopted son, in the family of the natural father, on account of a text of Manu.

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* Formed from 'Çakuntá a bird, and the root 'la' take &c.

In which the terms 'funeral oblation,' and 'obsequies,' denote uncleanness and every other observance.

2. The terms 'funeral oblation' and 'obsequies' in this text are inclusive of every observance in honour of manes, uncleanness and so forth; for the exclusion of the family and estate, which are the cause of presenting the funeral oblation and so forth is mentioned: and it is a restrictive condition that uncleanness which is spiritual, precede the presenting the funeral oblation, and so forth, in honour of the dead.

Authorities, shewing the concomitancy of uncleanness, and the funeral oblation, cited.

Conclusion.

3. And hence, the funeral oblation being barred, the exclusion of uncleanness is even implied; for by well considering such passages as the following the concomitancy of the funeral oblation and uncleanness appears.— "Whether one of the same family, or one not belonging to the family; whether a male or female; whoever, on the first day, presents the funeral cake, should complete the rites, till the tenth: and so also, it is not well for those who previously receive anything from the performer of these rites."*—"Whilst the uncleanness lasts, a libation of water, and one funeral cake."†—therefore, there is no reciprocal uncleanness, and the like, between the adopted son and his natural father, and the rest.

Any conclusion, from a passage cited, that uncleanness mutually obtains between the adopted son and his natural father, and the rest, obviated.

4. As for the text,—"Impurity (aghan) arising from seminal connection, also continues three days"‡—that is overruled by this passage; "But of him who has given away his son, the obsequies fail:" for, it applies to instances other than that of the adopted son. Besides, since it appears that family and alliance by oblation of food are collectively the cause of impurity, the libation of water, and so forth; should one of these essentials be wanting, impurity and the rest, occasioned (partly) by it, does not exist.

A text of Sankha and Likhita confirmatory.

5. Accordingly Sankha and Likhita. "The connection as sapiṇḍa from family, must be recognized, as extending to the seventh degree: and the funeral cake, and the gift of water, purity and impurity, are consequent to it."

On the death of the adopted, the uncleanness of the adopter, last three days as shewn by

Vṛhaspati.

6. On the death of the son given, and the rest, the uncleanness of the adoptive father, and others, endures for three nights. This Vṛhaspati declares:—"Wives, having taken to other men, and children by the wife of another being dead: the best of the regenerate, having bathed, are purified."—And this rule for uncleanness, applies to him only, to whom, the relation of wife or son, refers.

* Gṛihya-pariśishṭa. † Vishṇu. ‡ Yájñavalkya.

Márichi propounds the impurity of the kinsmen of the father.

7 Márichi separately propounds [the uncleanness] of sapindas of the father, connected within the third degree. "On occasions of birth and death likewise, [the period of impurity,] for the first and second [husband,] is three nights: where the impurity of the father, endures three nights, that of the sapindas lasts one day."

Impurity from birth propounded.

8. Although, no impurity of the adopter, by acceptance of sons given and the rest, (who are already born,) as arising from their birth obtains: still, uncleanness is incurred from the birth of their offspring.—But, on account of the birth of the son of the twice married woman, in his own house, uncleanness on that occasion is fit.—Thus, is impurity from birth shewn.

Uncleanness, only takes place where there is equality of class, as shewn by a passage of the Bráhma-purána.

9. This however regards sons of equal class only—Accordingly the Bráhma-purána;—"Excepting the legitimate son, on the death and birth of the son of the wife, and the rest, always in every tribe, the impurity of those equal by class, endures three nights.—This is a settled point."

Explanation of 'always' therein occurring.

10. 'Always'—that is,—every time subsequent to investiture of the characteristic thread.

A text confirmatory cited.

11. [Prajapati also] "Wives having taken to another, and children by the wife of another, [being dead:] those of the same general family, are purified by ablution: after three days at least, one versed in the divine truth.

The uncleanness of the disciple for ten days on the death of his 'Guru' is propounded by Márichi.

12. Although, [it may be alleged, that] on the death of the adopter, the uncleanness of the adopted son, for ten days, is not fit, since the [general] relation of sapinda and connection by identity of family, associated together, are wanting [in him]; and no special rule in that respect, is at present found: still, by the following passage of Márichi, uncleanness for ten days is propounded, for the purpose of the disciple's performing the necessary rites, in honour of his deceased 'Guru.' "The disciple of a deceased 'Guru,' performing uninterruptedly for ten days, with food for manes, the obsequies for a father, is purified."

Whose term 'Guru' is illustrative of the adopter.

Consequent conclusion.

13. Here the term 'Guru' represents the preceptor, and other superior; and such venerable superiority obtains in the individual in question [the adopter], on account of his performing the rite of investiture, and so forth.—Therefore, in case of the adopter having performed the initiatory rites of the adopted, the impurity of the latter endures for ten days; if this be not the case, for three nights only: on account of the text before cited.—(§ 9).

14. So on the death of a sapiṇḍa of the adopter, related within the third degree, the uncleanness of the adopted son, is for one day: for, the text in question of Máríchi recites,—" that of the sapiṇḍas for one day."

His uncleanness for a sapiṇḍa of the adopter.

15. On the death of one connected by an oblation of water, and one belonging to the same general family, ablution only is necessary; on account of the text of Prajapati, before cited (v. § ii.) " Wives having taken to another, and children by the wife of another, being dead, those of the same general family are purified by ablution, &c."

For a distant kinsman.

SECTION IX.

On the funeral obsequies to be performed by the adopted son.

1. Next the funeral rites, performed by the adopted son, are described. On this subject, Játúkarṇa says:—" Annually let the son of the wife, and legitimate son perform [obsequies] according to the parvana form: the other ten sons, should perform the rite dedicated to a single ancestor."*

Játúkarṇa cited, on the subject of the obsequies, to be performed by the adopted son.

2. 'Annually'—from this general mode of expression, although, the monthly (amavásya) and other periodical funeral repasts † be inferrible; that only on the anniversary of the day of death is meant. For, the terms—" the anniversary of the day of death"—are expressly used in this text of Paráçara. "[A funeral repast,] by the legitimate son, for a father, who has departed this life, on all occasions is in honour of three ancestors, that by those of a different general family (aneka-gotra), is the rite consecrated to a single person, on the anniversary of the day of death."

The term 'annually' used by him, means the funeral repast on the anniversary of the day of death, as appears from a text of Paráçara.

3. The expression—'those of a different general family' (aneka-gotra)—in this text does not intend the maternal grand-father, and the rest: for, its construction as intending a secondary son, as contrasted with the legitimate son, is proper,—from its proximity in the

The term 'aneka-gotra,' used by whom, refers to the secondary sons, and

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3. Nor is there any restrictive rule] If it is contended, that the term "aneka-gotra" (which occurs in Paráçara's text in the genitive case plural,) intends the mater-

* For explanation of the rites referred to V. Supra, Section IV. § 72.

† V. Note to the same.

not to kinsmen on the mother's side: for whom a single rite is not restricted.

same sentence with the terms 'father' and 'legitimate son': for, otherwise [no contradistinction between the legitimate and secondary sons being meant,] if the meaning intended, be conveyed by merely declaring that, [a funeral repast,] in honour of three ancestors, must be performed by the son, on the anniversary of the day of the father's death, it would follow, that the specification of the term legitimate were impertinent.—Nor is there any restrictive rule that on the anniversary of the day of death, merely the rite consecrated to a single person takes place for the maternal grandfather and the rest.

As appears from Máríchi.

4. Accordingly Máríchi says,—"Commencing with the father of the mother, three are considered maternal grand-sires—Let the sons of daughters perform for these, funeral oblations, as for the father."

Whose text, expressly provides for a párvaṇa rite, in honor of maternal grand-sires.

5. By ordaining, in this text, funeral oblations in honour of three maternal grand-sires, the párvaṇa or double rite only, is inferred.—From the expression—"as for the father,"—an option of performing, for the maternal grand-sires also, obsequies in the form of párvaṇa, or ekodishṭa, is not obtained; for, the sentence in question, is meant to enjoin, the absolute necessity for the performance of obsequies, in honour of the maternal grandfather.

An opponent's argument anticipated.

6. Besides, why should not also the term 'yearly' in the following text, like the word 'annually' [in Játúkarṇa's text (§ 1.)—supposing this word, there occurring, to have such import,] intend the magha, and other periodical funeral repasts, "Excepting the first sixteen funeral repasts, with rites performed with fire included,—and the yearly obsequies,—at the remaining funeral repasts, let six cakes be presented: this is a settled rule."

And refuted.

7. Should it be objected, that this would be an intended consequence; it is wrong, for it would follow, that the son given and the rest, at the different periodical funeral repasts would perform an ekodishṭa rite. Now this is not meant by any one. For, if the term comprehend any funeral repasts in general, other funeral repasts, (as must be understood from the term 'remaining') not existing, any exception would be impossible.

Annotations.

nal kinsmen this expression must be construed as designating the object and not the agent of the ceremony—Accordingly the translation will be "that, for those, &c." and not,—"that, by those, &c."

Conclusion.

8. Therefore this is the accurate exposition of the law,—that, on the anniversary of the day of death, in honour of the father and mother, a párvaṇa funeral repast only should be performed by the legitimate son: by the others (the son given and the rest), merely one consecrated to a single ancestor. To enlarge would be useless.

SECTION X.

On the succession of the adopted son.

Vasishṭha propounds the succession of the adopted son.

1. The inheritance of the adopted son is now propounded.—On that subject, Vasishṭha says:—"When a son has been adopted, if a legitimate son, be afterwards born, the given son shares a fourth part."—On the default of him he is entitled to the whole.

Conclusion.

2. Thus is the Dattaka-Mímánsá, compiled by the fortunate Nanda Paṇḍita, the son of the fortunate Ráma Paṇḍita, lord of virtue, completed.

Annotations.

1. Shares a fourth part.] "A quarter-share. not an entire share" v. Supra, Sect. v. para. 40.

DATTAKÁ CHANDRIKÁ.

TRANSLATED BY J. C. C. SUTHERLAND.

for the sake of the same, the constituting him [an adopted son,] is indispensable. Besides the two texts in question do not prohibit, where a brother's son may exist, the constituting [him or another] a son given and so forth: but indicate [as inherent in a nephew] the virtue of a son consisting in the capacity to perform the funeral repast and so forth.—For otherwise a contradiction of the rule for the production of a kshetraja son, notwithstanding a brother's son may exist would follow; and since by the text subjoined, the resemblance of a son's son obtains in a daughter's son, according to the reasoning recited, the non-adoption of a son given, and the rest where a daughter's son also might exist would result. "By that male child, whom a daughter whether formally appointed or not, shall produce from a husband of a equal class, the maternal grandfather becomes the grandsire of a son's son: let that son give the funeral oblation, and possess the inheritance."*

Argument of the opponent, that then by analogy, the son of a rival wife would not bear filial relation to his childless step-mother, without adoption.

23. But, if where even a brother's son may exist, the constituting [him or another] a son given and so forth be legal; then, though in the texts subjoined, the resemblance of the virtue of a son is shewn to obtain in the son of a rival wife, where even such son existed, the affiliation of a son given and so forth by the step-mother might take place.—Vrihaspati.—"The same rule is also ordained in respect to many wives, of the same person." Manu, "If among all "the wives of the same husband, one bring forth a male child, Manu has declared them all by means of that son to be mothers of male issue."

Controverted.

24. Should this be objected, it is wrong. In the same manner as where the curd,—which is the object contemplated by the person proceeding to produce the grumous substance alluded to in the passage of the Vedas subjoined—is

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24. In the same manner as where the curd, &c. &c. Reference is here made to the 9th topic of the first Chapter, 4th Book of the Mímánsá of Jaimini. This is detailed in a note to § 24. sect. VI. D M.—By mixing coagulated in boiled milk, the curd denominated 'ámikshá' and whey are produced: where on the occasion of any sacrament, such curd is wanting. that is the object intended to be produced and causing the act of admixture; not the whey, which is incidentally produced. In the same manner the object and motive of any adoption by the wife, (which must be sanctioned by the husband) are to create male issue to her husband, destitute of the same and not to herself; though the filial relation of the adopted to her is incidentally produced: consequently, where the husband has male issue, as the primary object of the act does not exist, the wife cannot adopt.

Or,—in the same manner, as on the anniversary of the decease, of a father, &c. &c. &c.] The nature of a Párvaṇa rite here alluded to is explained in a note to § 72, section IV. D. M. During the first half, the month Asvina, (denominated in consequence

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* Manu 9, 136.

wanting, it is that substance which causes the individual to proceed therein and not the whey or serous part [incidentally produced]; for that not being the object is of no use.—"He mixes coagulated milk (dadhi) in boiled milk; that is a curd of two milk whey (ámikshá),—an oblation to the Vaisvadeva set of divinities, and whey for horses."—Or—in the same manner, as on the anniversary of the deceased of a father, [who died during the first half of Açvina denominated pitripaksha], the ceremonials of a párvaṇa rite having been completed in honour of the father and other two paternal ancestors in ascent above him,—a párvaṇa rite is not recommenced on account of the funeral repast in honour of the maternal grandfather and other two male ancestors [on the mother's side]; for the commencement of the same depends on the funeral repast in honour of the paternal ancestors, [which in this instance would have been already completed]:—So also in the case in question, the affiliation of a son by woman proceeding legally, with the sanction of her husband, to constitute for him male issue, only takes place where no son of that person may exist. But, if he have any, although she may be destitute of the same, such adoption does not obtain; for to proceed therein would be unproductive of the object.

25. In that case she would not be exempted, from exclusion from heaven. In anticipation of this objection, the two texts of Manu, and Vrihaspati, by propounding the existence of filial relation, in the son of a rival wife, [to his step-mother,] provide for her exemption, from exclusion from heaven, and the performance for her funeral obsequies; for, except the offspring of her husband, she can have no other.

Objection obviated.

Annotations.

pitri-paksha,) Párvana rites are celebrated; whereas the same solemnities observed in honour of paternal ancestors are observed in honour of maternal—But it is ordained, that where the father may have died during this fortnight on the anniversary of the day of his death, instead of the usual eko-dishta or rite dedicated to him alone, the same ceremonials of a Párvaṇa rite shall be performed as would have been celebrated in honour of the father, and his own ancestors, had the anniversary of his deceased not fallen within this fortnight: but a Párvaṇa rite shall not be commenced for the sake of the solemnities which, on this supposition would have been observed in honour of the three maternal ancestors: for the commencement of these is held to be subordinate to, and to depend on the same solemnities in honour of the paternal ancestors, which would have already been especially performed. Or, in other words, the main object of performing a real Párvana rite, is the celebration of solemnities in honour of the paternal ancestors: in the case propounded, these would have already been performed: therefore the main object being wanting, a Párvaṇa rite is not commenced on account of the solemnities which, (had a real Párvana rite taken place) would have been observed in honour of the maternal ancestors. In the same manner, the main object of any adoption by a wife, is to create male issue, to her husband having none; but where he may have such issue, although she may have no son, she cannot adopt; for the primary object and motive would be wanting.—The translator has deemed it incumbent on him to attempt illustrations of the analogy alleged by the author to exist between the two cases cited, and the one proposed: this has been done in this and the preceding note. The analogy however is far from being obvious from the terms of the text.

General conclusion, that a son of a rival wife, unadopted, is filially related to his step-mother: but not so, a nephew to his uncle.

26. Since, [a wife] can have no other offspring, but the issue of her husband, the son in question even preserves her lineage. Therefore, where, the son of a rival wife exists; as the whole benefit even of a son is attained, no affiliation, [by the step-mother, of him or another,] as a son given and so forth, takes place.—But as the capacity of prolonging lineage, does not obtain in a brother's son, although such son may exist; [he, or if any impediment exist, another,] must be affiliated, as a son given and so forth: there is in this respect a material difference.

Objection, that the gift in adoption, of an only son, being forbidden, the adoption of a nephew, who is an only son, could not take place.

27. But if, a brother's son existing, the affiliation of him only is indispensable; where there may be only one brother's son, in that case the adoption cannot take place; on account of the text of Vasishtha, which recites,—"An only son let no man give, or accept.—For he is destined to prolong the line of his ancestors."

Over-ruled, as the prohibition does not refer to the son of two fathers.

28. Should this be alleged, it is not accurate. For, the text in question, is applicable to a case, other than that of the Dvyámushyáyaṇa, or son of two fathers.—In the case of the Dvyámushyáyaṇa, the extinction of lineage, contemplated in the clause of the text, containing the reason, would not take place; and an indication found in the Puráṇas, as to the affiliation, by Vetála, of the son as [his brother] Bhairava. Thus—"Accordingly he (Bhairava) at some time copulated with Urvasí, a celestial nymph, and procreated on her a son named Suvesa. Vetála also affiliated him, as his son; and in consequence by means of this son, both attained heavenly salvation."*

A man only having several sons, may give one, as is declared by Çaunaka.

29. In answer to the question—by whom is a son to be given? Çaunaka declares "By no man, having an only son is the gift of a son to be ever made. By a man having several sons, such gift is to be anxiously made."

Whose expression 'several' bars, the gift by one having only two sons.

30. The author apprehending an extinction of lineage in case of the gift of a son by one even having two sons says; "by one having several sons."

With the sanction of her husband, a woman may give her son, without if it be dead, &c.

Vasishtha.

31. But by a woman, the gift may be made with her husband's sanction if he be alive; or even without it if he be dead, have emigrated or entered a religious order.—Accordingly Vasishtha. "Let not a woman either give or receive a son unless with the assent of her husband."

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* V. D. M. sect. II. § 45. et notes.

This assent of the husband is implied by his silence, and the independence of the woman is indeed suggested by Yájña-valkya.

32. Now, if there be no prohibition even there is assent: on account of the maxim; "The intention of an other, not prohibited, is sanctioned."—Yájña-valkya suggests, the independency of the woman. "He whom his father or mother gives is a son given."—Also, in another place; "deserted by his father and mother or either of them."

SECTION II.

The form for adoption—The most eligible period for selection-Rules under certain circumstances—The adopted son may be son of two fathers.

The form for adoption.

Çaunaka.

1. Next Çaunaka propounds the form for the adoption of a son. "I, Çaunaka, now declare the best adoption: One having no male issue or whose male issue has died, having fasted for a son;—"

Explanation.

2. Adoption.] The form for adoption—Having fasted.] Having observed a fast on the day preceding the adoption.—Vriddha Gautama has—"The impotent man or also one whose offspring has died."

Çaunaka continued.

3. "Having given two pieces of cloth, a pair of ear-rings, a turban, a ring for the fore-finger to a priest religiously disposed, a follower of Vishnu, and thoroughly read in the Vedas. Having venerated the king and virtuous Bráhmanas by a madhuparkha (or prepared food consisting of honey, liquid butter and curds.)"

Explanation.

4. If the king be at a distance, [he should thus venerate] the chief of the village; for a text recites: having invited all kinsmen, and the chief of the village also,"*

Annotations.

4. The argument exemplified by the instance of the white partridges.] Allusion is here made to the 8th topic of the 1st chapter (páda) of the 11th Book (adhyaya) of the Mímánsá of Jaimini. A passage in the Vedas to this effect occurs. "On the occasion of the sacrifice of a horse, he should kill white partridges, for Vasanta (the god of spring)." In the part of the Mímánsá mentioned, it is proposed, as a subject for disquisition, whether, by the term 'partridges' in the plural, any indefinite number ex-

* Gautama.

Bráhmaṇas.] The plurality meant by this word, is restricted to three on account of the argument, exemplified in the instance of the white partridges.—The venerating Bráhmaṇas is with a view to their asking [the child in adoption.]

Çaunaka continued.

5. "Both a bunch of sixty-four stem, entirely of the kuça grass, and fuel of the paláça tree,—also having collected these articles: having earnestly invited kinsmen and relations: having entertained the kinsmen with food, and especially Bráhmaṇas: having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the liquid butter: having advanced before the giver let him cause to be asked thus; 'give the boy.'—The giver being capable of the gift [should give] to him with recitation of the five prayers, the initial words of the first of which are ye-yajñyena, &c."

Explanation.

6. 'Should give' is understood—'kinsmen' [the kinsmen of the father and mother. 'Relations'] sapiṇḍas. The inviting these is for the sake of witnessing.—Having entertained invited kinsmen, and Bráhmaṇas previously appointed, and (on account of the conjunction 'and') invited relations.- This is the meaning.

Çaunaka continued.

7. The same author continues.—"Having taken him by both hands with the recitation of the prayer, commencing,—"Devasya-tva, &c.;" having inaudibly repeated the mystical invocation,—'angadange, &c.;' having kissed the forehead of the child; having adorned with clothes, and so forth, the boy bearing the reflection of a son."

Commentary.

8. 'Reflection of a son.'—The resemblance of a son,—or in other words,—the capability to have been begotten, by the adopter, through appointment, and so forth.

Text continued.

9. The text continues.—"Accompanied with dancing, songs and benedictory words, having seated him in the middle of the house; having according to ordinance, offered

Annotations.

ceeding two, is meant, or three only—The opponent affirms, that any indefinite number, is meant; since plurality, is common to every number, exceeding two. The supporter of the correct opinion, however, alleges :—1st. That, the ordinance of law in question, is fulfilled by three.—2dly. The number three, must necessarily be included, in every plural number; but four, or other superior number, is not included in three.—3dly. The number three, is the first in order of all plural numbers.—4thly. The selection of that number, is more convenient.—5thly. The intent of the law, being accomplished by three, in destroying more than that number, an offence would be incurred.—Hence, he argues, that three only, are meant by the plural term, used in the ordinance cited.

a burnt offering of milk and curds (to each incantation,) with recitation of the mystical invocation 'yas-tvá-hrida'—the portion of the rik Veda, commencing, 'tubhyam agne',—and the five prayers of which the initial words of the first are 'Somo-dadat.'"

Vriddha Gautama.

10. Vriddha Gautama.—"Let him then cause, to be offered, as burnt offerings, an hundred oblations of milk, with liquid butter, contemplating in his mind, as the object, the lord of created beings, with recitation of the prayer,—'prája-pate-na-tva-detam.'"

Vasishtha.

11. Vasishtha.—"A person being about to adopt a son should take an unremote kinsman or the near relation of a kinsman; having convened his kinsmen, and announced his intention to the king and having offered a burnt offering with recitation of the prayers denominated 'Vyáhriti' in the middle of his dwelling. But if a doubt arise let him set apart like a Çúdra one whose kindred are remote. For it is declared in the Vedas; 'many are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."

Commentary.

12. 'Dwelling'] house—'A doubt.'] If from the great difference of the country and language of one whose kinsmen are remote a doubt arise as to his lineage, disposition and so forth; this being the case till the ascertainment of these particulars let him not initiate such person.—On this point, a reason is assigned,—"many are saved, &c." 'Many'] The father and other ancestors."

Form must be observed.

13. One of these forms is indispensable.

Text of Çaunaka continued.

14. In continuation Çaunaka says. "Let the best of the regenerate, to the extent of his ability bestow a gratuity on the officiating priest; a king half even of his dominion; next in order a Vaiçya three hundred pieces; a Çúdra the whole even of his property: if indigent, to the extent of his means.

Commentary.

15. 'Half his dominion.'] The produce for one year of half his dominion; for a text of Vriddha Gautama recites; "Let him proffer the profits arising from half his dominion received in one year."—According as he may be in a superior, middling or inferior condition [let a Vaiçya give] three hundred pieces of gold, silver or copper respectively: on account of the text of Vriddha Gautama. "Let him proffer three hundred pieces in gold or in silver or in copper according as his condition may be superior or otherwise." 'His whole property'] that is the acquisition by hire for one year.

Baudháyana propounds a special rule.

16. Baudháyana propounds a special rule for the followers of the Tittiri Veda.—"We are about to explain the mode for the adoption of a son. One about to adopt produces two pieces of cloth, a pair of ear-rings, a ring and a priest thoroughly read in the Vedas, a bunch of sixty-four stems of the kuça grass and fuel of the 'purna' tree.* Then having invited kinsmen into the middle of the dwelling: and having made a representation to the king: having sat down by the direction of a Bráhmana in the assembly: having caused to be exclaimed auspicious day! benediction! prosperity! having performed rites commencing with the recitation of the prayer—'yad-devay-jana', —down to the placing the vessels for water: having advanced before the giver, let him thus beg; 'Give me this son'—The other replies 'I give'—He receives the child [and says;] 'I receive thee for the sake of religious duty: I adopt thee for offspring'—Then having adorned him with the cloths, the ear-rings and ring: having performed the investiture and other ceremonials down to the kindling a flame of fire; having dressed the oblations, he offers a burnt offering after having recited the incantation in the first chapter of the [Yajur] Veda commencing—"yas-tvá-hridá-kirinámanymána"—with recitation of the sacrificial prayer—"yasyai-vam-sukrite-játa-veda, &c."—he offers a burnt offering. Next having performed the burnt sacraments, where the prayers denominated vyahriti are recited: and that designated 'svishti-krit' with other ceremonials, being completed, down to the bestowing an excellent cow he presents the fee [saying: 'yours are] these two cloths, the ear-rings, and the ring likewise." But subsequently, if a real legitimate son is born, he [the adopted son]' succeeds to a fourth share—so says Baudháyana."

The right of one adopted without form, will be declared in the sequel.

17. In case, no form as propounded, should be observed, it will be declared, that the adopted son is entitled to assets, sufficient for his marriage.†

Manu propounds, that the relation of the given son to the family of his natural father ceases.

18. On the subject [of adoption,] Manu says, "A given son must never claim the family and estate of his natural father. The funeral cake follows, the family and estate: but of him who has given away his son, the obsequies fail."

His text explained.

19. It is declared by this, that through the extinction of his filial relation from gift alone, the property of the son given in the estate of the giver ceases; and his relation to the family of that person is annulled.

* Butea Frondosa. † V. infra, sect. VI. § 3.

The initiatory rites unperformed, at the time of adoption, are to be completed by the adopter; but not those performed.

20. And accordingly, since extinction of relation to the family [of the natural father,] and so forth is shewn, and as a text recites,—"let the father initiate his own sons,"—the initiatory rites even of the adoption, which are yet to be completed subsequent to adoption, are to be performed by the adopter; but those already performed by the natural father are not to be cancelled. For, any argument in respect to the renewal of these is wanting; since the removal of the taint of the seed and so forth, and the acquisition of priesthood, as suggested in the following texts have already taken place. "Thus the sin produced by the seed, and "womb acquires expiation, &c." "As a picture is produced gradually by many lines, priesthood in the same manner proceeds by the observance of form."

Objections would otherwise exist.

21. Otherwise, it would follow from the text subjoined, that he would have to perform also the rites of Punsavana and Símantonnayana.* "Let the father himself perform the eight initiatory rites, (or on his default some other) in their order." Now, this would be improper; for, it would not be consistent with approved practice: besides, as his authority to perform initiatory rites is from his relation of father subsequent only to adoption, the incompetency of the adopter in respect to rites which should take place previous thereto, [no reason of extreme necessity operating] follows; for, the appropriate time of performance no longer exists.

But rites which should have been, but were not performed by the natural father, may be so by the adopter on account of necessity.

22. But, if however, the initiatory rites which should have taken place previously have not been performed by the natural father; they are in that case to be completed by the adopter even, no account of the indispensable necessity of removing the taint of the seed and womb; and for the sake of preserving the order prescribed for the performance of the rites in question.

Annotations.

20. **But those already performed......are not to be cancelled, &c.] This has reference to the principal adoption taking place within the primary season prescribed for the performance of the right of investiture, which, in the case of a Bráhmana is ordinarily the eighth year *v.* infra § 23, 27, 30, 32.**

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* V. note to § 23, sect. IV. D. M.

23. And accordingly if the rite of investiture merely be performed [by the adopter, the previous rites having been performed by the natural father,] the filiation of the son given, as son of the adopter is completed; in conformity with the text of Vasishtha subjoined. But this must be understood in respect to an adoption taking place within the primary season for the rite in question which extends to the eighth year; otherwise, [in the case of an adoption after the expiration of such season,] the capacity of having been able to perform that rite, during the principal season being wanting, as there would be no ability for the same at a secondary season, the rite would remain unperformed, [unless as required in such inferior adoption the rite of tonsure; preceded by a sacrifice for male issue were renewed.] Text—"Sprung from one following a different Çákhá, (or branch of the Vedas,) the given son even when invested with the characteristic thread under the family name of the man himself, according to the form prescribed by his peculiar Çákhá becomes participant of the duties of such Çákhá.

In that case the performance by the natural father of the rite of investiture merely, establishes the filial relation of the adopted.

Vasishtha.

24. And relative to the subject in question, [it is to be observed, that] should an agreement subsist stipulating that the son adopted should be son of the natural father and adopter likewise, a special rule for his participating in the family of both by reason of being a Dvyámushyáyaṇa will be declared.*

The relation to both families by special agreement will be declared.

25. "Oh! lord of the earth, a son having been regularly initiated under the family name of his [natural] father unto the ceremony of tonsure, does not become the son of another man. When indeed, the ceremony of tonsure and other rites of initiation (chúḍádyá sanskárá) are performed [by the adopter] under his own family name, [then only] can sons given, and the rest be con-

A passage on the subject of adoption attributed to the Puráṇas is not authentic.

Annotations.

23. But this must be understood in respect to an adoption, &c.] The doctrine of the author appears to be that adoption may take place at any age;† though the more preferable adoption is that of a child for the performance of whose rite of investiture the principal season has not expired. In this case the author holds that he becomes filially related by the mere observance of the rite of investiture, the other previous rites of tonsure, and those preceding the same having been performed by the natural father.

As there would be no ability, &c.] The author supposes the case of adoption of a child for whose investiture the principal season has passed, where the adopter may omit the performance of the sacrifice for male issue, as prescribed for this inferior adoption. On the performance of this sacrifice, the adopter must perform for the child in question, the rites of tonsure and the rest, whereby filial relation is produced, (v. § 27, 30, 32.)

* V., infra, section V. § 33.

† V. infra. § 33.

sidered as issue: else they are termed slaves.—Whether he be one, whose initiation has been completed, or one whose pupilage (çaiçava) has passed on adoption after the fifth year, the adopter should first perform the sacrifice for male issue." As for what they thus read as from the Puráṇas, that is unauthentic.

Or if authentic, it cannot be construed as barring the filial relation of a child whose tonsure may have been performed by his natural father: or, who may be older than five years.

26. Were it even authentic, still the interpretations given by some that,—"One initiated in ceremonies down to that of tonsure under the family name of the natural father bears no filial relation to the adopter; but such relation obtains, where the ceremonies commencing with that of tonsure are performed by the adopter only"—and—"if a child, whose tonsure has been completed [by the natural father], or one past five years of age be adopted, in that case, his filial relation does not accrue"—are inaccurate. For, a repetition [of the same position in two sentences of the same passage] would follow;—the generally received rule, as recognized by all good persons in respect to the filial relation previous to the investiture of the characteristic thread, of one also adopted under five years of age, [if uninitiated in tonsure by the natural father] would be invalidated;—and the adopter dying at that juncture, incompetency [of the adopted] to perform his obsequies would result.

The correct construction shewn.

27. On the contrary, this is the meaning of the passage.—Filial relation [to the adopter] of one initiated down to tonsure, under the family name of his natural father being first barred,—on the repetition of that ceremony and the rest, such relation is exempted from the prohibition: and accordingly, since previous to the performance of tonsure and the other rites by the adopter, the servile state of one initiated [by his natural father unto that ceremony,] and of him who has passed his fifth year is intimated: after the performance of that ceremony and the rest [by the adopter,] filial relation to him is established. In respect to one whose initiation has not been performed [by his natural father,] and a child who is under five years of age, this relation is obtained by law alone, and this is notorious.

Or another interpretation may be admitted.

28. Or, there may be this interpretation;—'a son [if adopted,] though initiated as far as tonsure by his natural father is not a son [to such father]:'—the author having thus premised such son not to be filially related [to his natural father],—the sentence 'anya-

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Annotations.

26. **At that juncture.**] That is previous to the performance of the rite of investiture of the characteristic thread, for which the eighth year is prescribed as the principal season.

28. **Or there may be this interpretation, &c.**] In the original, the two first verses of the supposed extract from the Puráṇas, cited in § 25, run thus—'pitur-gotreṇ-yah'

taschaputratám yáti' (meaning 'and he acquires filial relation to another') is subjoined as a reason: and thus the objection that one term 'putraḥ' (son) and the particle 'cha' are unmeaning is obviated.

Under which chúḍádya occurring in the text would intend rites preceded by tonsure.

29. And thus, on account of uniformity of import with the text of Vasishṭha before cited, (v. § 23,) by the compound epithet 'chúḍádya in the quality conveyed by which the term 'chúḍá' is not included, rites commencing with that of investiture for persons of a regenerate tribe would be suggested; but for Çúdras marriage and so forth implied.

Import of the clause commencing "after the fifth year, &c." which occurs in the supposed extract, cited in § 25.

30. "After the fifth year." This regards a Bráhmaṇa, seeking the fruit of holiness resulting from the study of scripture.* For since the fifth year only is the principal season for the investiture of the characteristic thread of one desirous of such holiness, as is shewn by this text,—"For a Bráhmaṇa desirous of holiness, resulting from the study of scripture, the fifth year, &c."—the passage in question has the same foundation. But for one not so desirous,—"after the eighth year, the adopter, &c."

Annotations.

putrah sanskritah prithivi-pat. * * á-chūd antamna putra so putratum-yáti chányatah.—The translation given, conforms with the commentary in the Dattaka-Mímánsá: but a more literal version of these two verses would be thus.—"Oh! lord of earth, the son who (vaḥ putrah) has been initiated under the family name of his natural father unto the ceremony of tonsure,—that son does not acquire filial relation, to another (na putraḥ sa putṛatam-yátichányatah.)" Against this construction, the author objects justly, that one of the terms putraḥ (son), which occurs twice, and the conjunction 'cha', (which signifies 'and,') become redundant and unmeaning: were, as he suggests, the phrase 'na putraḥ' construed as the predicate of the position, which preceded; and what follows, as containing a reason, for this position; this objection would not apply.—According to the mode of construction adopted, in the translation, the part commencing from 'na putraḥ' to the end of these verses is received as the predicate of the position contained in what preceded.

29. By the compound epithet chūḍádya, in the quality, &c. &c. &c.] This compound term might either signify, commencing with tonsure or following tonsure: if the latter construction be adopted, the compound would be denominated 'atad-guna' that is the term chúḍá, would be merely segregative and not enter into the quality conveyed by the epithet.

30. "After the fifth year," &c.] In the extract cited in § 25, attributed by some to the Puráṇas, it is stated that a sacrifice for male issue must be performed where a child exceeding five years of age is adopted.—This implies that the fifth year limits the more appropriate season for adoption, during which the filial relation is produced without any special rite as here alluded to.—The author here shews that the mention of the fifth year as the limit of this season has reference to a Bráhmaṇa, who is intended for the study of theology, for whose investiture, (a rite which precedes the acquisition of letters,) that year is prescribed.—He accordingly argues that in respect to

* V. D. M. sect. IV. § 53 et note.

31. [In adoption] respect should be shewn to the several principal seasons, for the performance of the upanayana rites of the Kshatriya and the Vaiçya respectively. For he only, to whom authority, produced in the principal season might have attached, is capable to perform such initiatory rite at a secondary season [if not qualified by the renewal of the ceremony of tonsure, preceded by a sacrifice for male issue.] This was before declared (v. § 23).—But in regard to tonsure, attention to the secondary season may be observed on account only of express passages of law.

In the adoption of a Kshatriya or Vaiçya, respect must be had to the principal season for their upanayana.

It is otherwise in regard to tonsure.

32. 'Sacrifice for male issue.' Since, a person of the three first tribes only is competent to perform this by such person, the filial relation must be completed through the rites of tonsure and the rest, preceded by a sacrifice for male issue. But by a Çúdra, the same even [is produced,] through the rite of marriage alone—Thus the whole is unimpeachable.

Those of the three first tribes only, can perform the sacrifice for male issue.

33. And thus, the practice of all the ancients even in respect to the adoption of a son unlimited to any particular time is upheld. For, the construction suggested [by us of the supposed extract from the puráṇas] is self-evident.*

The ancient practice of adoption unrestricted to any period is upheld under the construction in § 27 and 30.

Annotations.

others not so destined it is meant that the eight year, which is the primary time for the performance of that rite, limits the more appropriate season for the adoption of such persons: that is, that a sacrifice for male issue must be performed, where one who has passed his eighth year is adopted.—The author, though he does not admit the authenticity of the passage attributed by some to the Puráṇas, yet construes it so as to conform with his own doctrine; viz., that by the observance of a sacrifice for male issue, and the subsequent renewal of initiatory rites, one, though adopted after the principal season for the performance of the rite of investiture of the characteristic cord may acquire filial relation.

31. Respect should be shewn to the several principal seasons, &c.] Different seasons are prescribed for the performance of the upanayana, or rite of investiture of the characteristic cord, and other peculiar marks, on a Bráhmaṇa, Kshatriya and Vaiçya, respectively.—These seasons are indicated in the following text of Yájñyavalkya, translated according to the commentary in the Mitákshará. The upanayana rite of a Bráhmaṇa takes place in the eighth year from conception or the eighth year of his age: of Kshatriyas in the eleventh; or Vaiçyas in the twelfth year [from their conception or birth respectively.] Some hold according [to the custom] of the peculiar family [of the individual.]'* Another text of the same author relative to the extent of the period for the performance of this rite occurs.—"The period for the performance of this upanayana rite of a Bráhmaṇa, Kshatriya, and Vaiçya respectively extends to the sixteenth, twenty-second and twenty-fourth years. Subsequent thereto should the rite be unperformed, they become outcasts and uninitiated persons, excluded from participation in religious rites, and incapable of being taught the Sávitrí; except on the performance of a sacrament denominated Vrátyastoma."

* V. supra. 27. 30.

34. Also in the same manner under the second interpretation, (§ 28) the exclusive filial relation to the natural father, of the adopted son, whose tonsure has been completed, having been first barred by the conjunction 'and' in the sentence,—"and he acquires filial relation to another"—a common relation to the natural and adoptive fathers is obtained; on account of both even having performed initiatory rites: and this must be understood where there may be a stipulation to this effect between the two,—"This is son to us both," and such only is called a Dvyámushyáyaṇa having two fathers, and belonging to two families.

Or, under the construction in § 28, the passage may be consistently explained as importing the common relation to both fathers of one adopted after tonsure.

35. But is it not seen that the Kshetraja or son of the wife only is son of two fathers? Accordingly Hárita,—["The husband] living, [at the time of the "appointment] they call [the offspring of the same] the son of the wife: for [the natural father] has no controul over him. Were he dead [at such time,] they call him Dvyámushyáyaṇa: for there can be no doubt as to who was the natural father." Manu says, "But the owners of the seed and of the soil may be considered in this world as joint owners of the crop, which they agree by special compact, in consideration of the seed to divide between them.—The special compact proposed is a stipulation between the owners of the seed and soil, both destitute of male issue, to this effect,—"Mine is the soil, thine the seed: the offspring produced shall belong to both." Conformably, there is this text,—"A son begotten by one who has no male issue on the wife of another man, under the legal appointment, is lawfully heir and giver of funeral oblations to both families."*—But this relationship in question does not appear to apply to the son given; on the contrary, the following passage of Manu before cited is conclusive even of an opposite meaning. "A given son must never claim the family and estate of his natural father."

Objection, that the son of two fathers can only be the son of the wife technically so called.

36. Should this be contended, it is wrong; the relation to both fathers of the son given also is established: since by referring to this text of Baudháyana,—"What is declared in respect to one even of many, regulated by the same law, let him perform that, for the whole even. They are considered of the same description,"—the rules regarding the son of the wife are obtained in respect to the son given and the rest likewise:—and the following text has a general application in the Pravarádhyáya of Sankhyáyana,—"He should perform two funeral repasts, or at one, contemplating them separately, he should designate at each oblation, both the adoptive and natural fathers; together with the two ancestors in immediate ascent above each."

Over-ruled; the general adopted son may be son of two fathers.

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* Yájñavalkya.

37. Accordingly Satya-shádha by the compendious rule,—"of absolute Dvyámushyáyaṇas of both, &c."—having propounded a relation to both families (including the partriarchal saints) of absolute Dvyámushyáyaṇas, who are sons of the soil, applies by analogy, the rule regarding these [to sons given and the rest,] by another aphorism, commencing,—"of sons given and the rest, like the Dvyámushyáyaṇa, &c."—and this is explained by the commentator:*—"Treating on absolute Dvyámushyáyaṇas, the author mentions those incompletely so,—"Of sons given and the rest, &c." unto these only, not to issue beyond, [does the connection to both families extend.] If the initiatory rites are performed by the first only [the families is his:] but if by the adopter, that of the latter on account of priority. Through him only in the case of descendants beyond, [the family is determined.]

Confirmed by Satya-shádha. The comment on whose text is cited.

38. The intent of this explanatory passage is this.—As in the case of the son of the wife,—should there be an agreement between the two, the adopted son participates in the family of both: otherwise where the whole of the initiatory rites have been performed by the natural father only, he shares the family of such father; but in the case of the initiation being performed by the adopter, in that of the latter,—that is the adopter, on account of 'priority,'—meaning superiority. 'Through him only, in the case of descendants beyond, the family is determined.'

And explained.

39. Accordingly Paiṭhinísi. "Those sone given, purchased, made, and the son of an appointed daughter, who are in such case affiliated through the adoption of a holy saint by another, are sons of two fathers."

Paiṭhínisi, confirms.

40. The meaning is. Where a mutual agreement between the natural father and adopter exists; [those affiliated] through the adoption of a holy saint, that is, one propounded by a holy saint, are Dvyámushyáyaṇas.—This is clearly declared [in the prayoga-parijáta.] "Sons given, purchased, and the rest are sons of two fathers: their marriage may not take place in either family even, as was the case of Sringa Çaiçira."

Explanation of his text which conforms with a passage in the Prayoga-parijáta.

41. The state of a son given as Dvyámushyáyaṇa, cannot obtain since, the property of the natural father in such son not being extinguished, the rule for the gift propounded in the text,—"Whom the father or mother may give, &c."—would be unmeaning.

Objection, that a son given cannot be a Dvyámushyáyana.

42. This must not be affirmed. From gift, preceded by an agreement, such [as that premised,] in the case in question even, the common relation [to both fathers,] of such

Over-ruled.

* Savarasvámi.

given son, is established; like the property of the owner, (since he himself is one of the objects,) in water made common, (as a river, and so forth, by a relinquishment, alluded to in such passages, as that subjoined,) the object of which, is every creature: and which extinguishes the peculiar property of the individual himself. "This water is relinquished by me as common to all beings, let all creatures enjoy it by bathing, drinking, and immersion." Enough has been said.

SECTION III.

Funeral rites performed by the absolutely adopted son,—by the Dvyámushyáyaṇa—Relation of Sapiṇḍa, in the families of the adoptive and natural fathers respectively.

An adopted son, and the real legitimate son, being co-existent, the latter performs the exequial rites.

1. Next, the funeral rites performed by a son given are determined. In respect to these, although the son given be first adopted, yet the legitimate son existing, he is not competent to officiate in the sixteen funeral repasts, ending with the Sapiṇḍikaraṇa; for his superiority in rank is barred by Devala [who says,] "A real legitimate son being subsequently born, superiority of rank from age does not vest in them." And a text of Yájñavalkya recites; "Amongst these, the next in order is heir and presents funeral oblations, on failure of the preceding. Otherwise the adopted son in every respect resembles the real legitimate one."

An exception obtains.

2. A special distinction obtains at the funeral repast, on the anniversary of the day of death. Accordingly Játakarna. "Annually (pratyabda) let the son of the wife and legitimate son perform [obsequies] according to the Párvana form: the other, ten sons should perform a rite dedicated to a single ancestor."*

Explanation.

3. 'The other ten,'—the son given, and the rest.

Parásara, confirms.

4. Parásara likewise.—"[A funeral repast,] by the legitimate son for a father, who has departed this life, on all occasions is in honor of three ancestors: that, by those belonging to more than one family, (aneka-gotrá) is consecrated to a single ancestor, on the anniversary of the day of death."

* V. D. M. Sect. IV. § 72 et note.

Explanation.

5. "By those belonging to more than one family."—Meaning those belonging to two families.

According to authorities quoted, the legitimate son, and son of the wife, if they preserve a consecrated fire, perform a Párvana rite, and the adopted son, under all circumstances, a single rite in honor of a deceased father.

6. The legitimate son, and the son of the wife also; if they preserve a consecrated fire, are competent to perform a Párvana, or double rite. For, the text of Jávala,—"By one preserving a consecrated fire, the funeral repast is to be performed always after the Párvana form"—corresponds with the Matsya-Puráṇa. "By those, other than the real legitimate son, and the son of the wife indifferently, whether they do or do not preserve a consecrated fire, a rite in honour of a single ancestor is to be performed. This is an established rule."

A distinct ceremonial, is prescribed for the Dwyámushyáyana by Sankhyáyana.

7. An aphorism of Sankhyáyana propounds a distinction in respect to the observances prescribed for the Dvyámushyáyaṇa. "Having duly performed the preparatory ceremonial called avanejana, where there may be a diversity of fathers, both at each oblation."

His text explained.

8. Where there may be a diversity of fathers at each oblation, both the natural father and the adopter,—"let him celebrate" as is understood.

The kshetraja, or son of the wife, according to a passage in the Pravarádhyáya under all circumstances, performs certain obsequies, for his natural father, and where such person has no other son, is his heir, and performs his funeral rites.

9. In the Pravarádhyáya also. "Those, who are begotten by a paternal uncle, for the obsequies of a single person, are the sons of the adoptive father only. Then, if there be no issue begotten on their [the natural fathers'] wives, let [the sons begotten on the wives of others,] take the estate and offer in their honor oblations, consecrated to three ancestors, if however, there should be [such issue,] still, such sons should present funeral cakes to both even. According to the text of a venerable saint, [the adopted son] should perform two funeral repasts, or at one, contemplating them separately, he should designate at each oblation, both the adoptive and natural fathers; together with the two ancestors in immediate ascent above each."

Explanation.

10. The meaning is;—where there may be no express agreement on the part of the adoptive father [that the adopted sons shall belong to both;] and, [the natural father,]

Annotations.

7. Ceremonial called avanejana.] This must precede the presenting of the funeral cake, and consists in pouring from a vessel on the kuça grass on which the same is offered water, white flowers and sandal wood previously mixed.

may not have other offspring : and where there may be such agreement by that person, and such offspring may exist, relation to both fathers obtains. In the passage cited, an option in respect to performing distinct funeral repasts or otherwise is contained.

The rule in question is general.

11. Nor does this [merely] refer to the son of the wife; for by the compendious rule of Satya-shádha,—"of sons given and the rest like the Dvyámushyáyaṇa, &c."—the rules regarding such son are shown to be applicable, also to the general adopted son who may be son to two fathers.

A passage of Hárita conforms.

12. Accordingly Hárita. "Of these, in the first place, the tutelary saints of the natural father [are those of the adopted son]. He should perform two several sets of funeral oblations, each consisting of two; or designate both in each (eka) oblation [of one set;] his son—in his second, his grandson, in his third [should do the same]. Some hold three to be partakers of the wipings; others, that they extend to the seventh degree."

His text explained.

13. 'Of these'—That is from amongst these fathers, in the first place the set of tutelary saints of the natural father—in the second that of the husband of the wife [are those of the adopted son who] has thus two sets of tutelary saints.—"In each (eka) oblation"]—a repetition [of the word 'eka'] is understood on account of the text of Apastamba. "If son to both fathers, "he should designate both at each several oblation."—'In his second'] at his oblation to his grandfather, the son of the Dvyámushyáyaṇa. 'In his third'.] that is,—at his oblation to his great-grandfather, the grandson of the Dvyámushyáyaṇa.

Rules as to the order in which the son of two fathers is to perform the funeral rites of his fathers respectively shewn by Márichi.

14. But, if the adoptive father died first, [the son] should present the oblation [first] to him; if the natural father then to the natural father; should both have died [at once,] then let him present first to the natural father and last to the adoptive. Márichi declares this. "He who may be procreated on a widow by a kinsman or one unrelated should first present the oblations to and perform the observances of the funeral repast in honour of the adoptive father, and after this to the natural father. If in any instance the adoptive father should survive [the natural one,] let the issue present [the oblations] first to the natural father: but the same must be given [to him] last [should he survive; the adoptive father] being dead. If both may have died [together, the oblation must be given,] first to the natural father: after him the son should present the same to the adoptive father. Should it not be first offered to the natural father, it does not endure.'

Whose text intimates that the son of two fathers is to perform a párvaṇa rite on the death of either.

15. By this, the performance of a párvana rite, by the son of both fathers, on the death of either even is shewn.

16. In the same manner, by parity of reason, where there may be a diversity of mothers, the sires of the natural mothers, are first designated by a son, who is son to two fathers, at the funeral repast, (suggested by the passage subjoined) in honour of the maternal grandsires: subsequently, the sires of her, who is the adoptive mother—"Where the paternal sires are honoured, there certainly are the maternal."

The same rule applies to the maternal sires, (by either mother,) of the son of two fathers.

17. But the absolutely adopted son presents oblations to the father and the other ancestors of his adoptive mother only; for he is capable of performing the funeral rites of that mother only: and thus, in conformity with the spirit of the sentence, "He is [destined] to continue the line of his ancestors,"—which is subjoined as the reason, [in the text of Vasishtha], the prohibition [therein],—"let not a man give an only son," refers to an adopted son, other than the Dvyámushyáyaṇa, or son of both fathers; for [where the adopted son is such,] no extinction of lineage ensues, as has already been declared.*

But not so in the case of the absolute adopted son.

18. The relation as sapiṇḍa, is next considered. This extends to three degrees; in the family of the natural father, by reason of consanguinity: and in that of the adopter, through connection by the funeral cake.

The relation as sapiṇḍa, extends to three degrees in either family.

19. This Kárshṇájini declares.—"As many as there may be degrees of fore-fathers: with so many, their own fore-fathers, let sons given and the rest associate the deceased. In order, their sons with two fore-fathers, their grandsons with (samam) one [should do] the same.—The fourth degree is excluded. This [relation of sapiṇḍa] extends to three degrees."

Kárshṇájini shews this.

20. This is the meaning of the text, according as the deceased adoptive fathers, may be sons legitimate, adopted [absolutely], or of two fathers: as many as there may be degrees of fore-fathers, three or six, with so many, let sons given, and the rest associate them;—that is—connect by admixture of funeral cakes.—Of the cases in question, where the adoptive fathers are real legitimate sons: [the fore-fathers, with whom their association is to be made,] are three, viz., the father, paternal grandfather and great-grandfather; where sons adopted absolutely, three, viz., their adoptive father, grandfather and great-grandfather; and where sons of two fathers, six, viz., their natural father and the other two, and their adoptive father, and the other two.

Explanation.

21. And thus it is intimated, that those who are the revered objects, contemplated at a párvana rite, performed by the adopted son himself are the same at the sapiṇḍi-

Enlarged on.

* V. Supra, Sect. I. § 26, 27.

karaṇa ceremony also celebrated for the adopted son by his own son: and the sons of an adopted son should perform his sapiṇḍi-karaṇa with his adopter, and two out of the three fore-fathers of this latter.—And in the same manner the grandsons of the adopted son should perform the same—that is, the association of their own fathers, by admixture of funeral cakes with—(for 'sama' is used by Kárshnájini in the sense of this preposition,) the adopted son, the adopter, and one out of three fore-fathers of that person; viz., the father of the adopter.

Explanation continued.

22. 'The fourth degree is excluded.'] Whatever person, at any time, performs the ceremony of sapiṇḍi-karaṇa for any one does the same with three fore-fathers only of that individual;—by this, [which is the meaning of what preceded the passage cited] the exclusion of the fourth degree is established. The propounding the same position, [by the passage in question,] in conformity with the rule of logic,—"a position having been established, its re-introduction, is for the sake of a peremptory rule"—is meant to bar the relation as sapiṇḍa [to the adopted son], of those, who (in the case of a real legitimate son,) would have partaken of the wipings of the oblations; by reason of their being precluded therefrom [in the present case]. The author declares this very position [in subjoining] 'this:' that is 'this relation of sapiṇḍa, &c.'

The general relation of sapinda extending to the seventh degree is thus barred.

23. And thus, the general relation of sapiṇḍa, extending to the seventh degree, which is propounded in the Matsya-purána, in the text subjoined, is barred by the special rule in question.—"The fourth and the rest in ascent are the partakers of wipings, the father and the others participate in oblations of food, the seventh presents the same.—The relation by oblations of food, of these, extends to the seventh degree." Consequently, the contrary doctrine suggested by Hárita, in this passage,—They propound the partakers of the wipings to be three, or according to some, they extend to the seventh degree"—is consistent, [as the opinion of the opposer of the correct doctrine.]

The same position is propounded in another authority.

24. This very position is elsewhere compactly declared.—"But of adopted sons, the relation of sapiṇḍa extends to three degrees, in the family of the natural father; and in like manner in that of the adopter, this is a fixed rule."

This relation of sapinda however, in both families only applies to the son of two fathers.

25. This relation of sapiṇḍa extending to three degrees in both families, is propounded in respect to the son of two fathers: for his performing the ceremony of association by admixture of funeral cakes, with two sets of three ancestors is declared [by Kárshnájini.] But the connection by funeral oblations of the absolutely adopted son obtains in the family of the adoptive father only: on account of the extinction of the funeral oblation of him, who hath given away his son, intimated in the following text of Manu, before

cited—"A given son must never claim the family and estate of the natural father; the funeral cake follows the family and estate: but of him, who has given away his son, the obsequies fail."

26. "The sons given, purchased, and the rest who are adopted from those of his own general family by observance of form acquire induction into the family [of the adopter].—But the relation of sapinda is not included." The meaning is—sons given and the rest though adopted from those of his own general family by the observance of form only, participate in the family [of the adopter]. But the relation of sapinda is not established in them: and such relation not obtaining in those belonging to the same general family, of course, it can not subsist in those of a different general family. As for this text of Vriddha Gautama, it is prohibitory of the relation of sapinda extending to seven degrees, which might be inferred from analogy to the real legitimate son: or it bars the impurity for ten days and so forth, arising from the relation of sapinda.—But it does not prohibit totally such relation on account of the several texts before cited.

SECTION IV.

The impurity of the adopted son on occasions of birth and death—His marriage.

In the case of the absolute adopted son, reciprocal impurity in the family of the natural father, does not obtain.

But in both families, in the case of the Dvyámushyáyana.

1. Next the impurity and so forth of the adopted son [on occasions of birth and death,] is determined. In respect to this topic, [it is to be observed, that] there is no reciprocal impurity of the absolute adopted son in the family of the natural father; for relation to his family and the presenting in his honour, funeral oblations being barred, the extinction of uncleanness is an obvious consequence. But the impurity of the Dvyámushyáyana, is in both families.

In the Brahma-purána the impurity is declared to last three days.

2. In the Brahma-purána [it is written,] "The son given, the son self-given, the son made, as well also the son purchased, and the deserted son, who are always to be cherished, belong to a different family present distinct oblations, and perpetuate a different lineage, and on occasions of birth and death, become impure for three days."

Parasára confirms.

3. Parasára. "On occasions of birth and death, impurity for three days is ordained for him, who, whether of a different or of the same general family by the will [of the adopter] is initiated and adopted."

Also another passage of the Brahma-purána.

4. "So also, excepting the legitimate son on the death and birth of the son of the wife and the rest, a general impurity, lasting three nights, always take place in every tribe.—This is a settled point."

'Always' occurring in 'which is explained, and 'the general position argued to be correct.

5. 'Always'—subsequent even to the investiture of the characteristic thread. As the relation of one, though of the same general family, to the family of his adoptive father is attained through the observance of form, after the previous extinction of relation to the family of his natural father; there is no distinction between an adopted son of a different general family, [and one of the same.] Therefore, the uncleanness for three days propounded in the text in question [indifferently for either] is even proper.

The offence of parivedana cannot be incurred.

6. Thus, where the adopted son may be unmarried, the offence of parivedana* is not incurred by the marriage of a legitimate son subsequently born: nor is there any objection against an adopted son marrying before his elder whole brother.

But the adopted son might marry any female of the family of his real father, and the Dvyámushyáyana, one removed more than three degrees.

7. But, since the extinction of his relation by oblations of food in the family of the natural father is shewn, the marriage of an absolutely adopted son, might take place therein: and the marriage of a Dvyámushyáyaṇa with the issue of a female removed in relation more than three degrees would be proper.

This objection over-ruled.

8. It is not so; for in the text of Manu, subjoined of which (on account of the conjunctive particle 'and') the construction is—'who is not connected as Sapiṇḍa, to his father [as well as mother;]'—the term 'father' is used to exclude [from marriage,] a female related as Sapiṇḍa to and belonging to the general family of the natural father also of an adopted son, although exclusively belonging to the family of his adoptive father.—"She who is not connected as Sapiṇḍa to his mother and "father, and not belonging to the general family of either, is approved "amongst twice born men for espousal and connubial intercourse."

Annotations.

5. Subsequent events, &c.] Three days are the period prescribed for the uncleanness of a person, previous to investiture of the characteristic thread on occasions of death and birth.—The author obviates an inference, that the period in question fixed for the adopted son is so merely in case of his investiture not having taken place.

See D. M. Note to Sect. VI. § 54.

A further objection refuted.

9. Nor must it be argued that, still, where the father of the adopted son might himself be an adopted son, there would be no reason barring the marriage with a female removed in relation to such father beyond the third degree; since her relation as Sapinda to, and being of, the general family of the father are wanting. Because, the relation of Sapinda in question does not apply to marriage: but is an universal relation of that denomination, predefined as extending to the seventh degree in the line of the father and to the fifth, in that of the maternal grandfather.—Thus there is no inconsistency. These several descriptions of relations of Sapinda will be enlarged on in their appropriate places respectively.

SECTION V.

The succession by inheritance of adopted sons lineally and collaterally—in the case of Çúdras—of the Dvyámushyáyana.

Vrihaspati cited, on the subject of the succession of the adopted son.

1. The inheritance of the adopted son is next propounded. On this subject Vrihaspati says,—"the real legitimate "son alone is master of the paternal estate: for the "sake of affection, let him allow subsistence to the "rest."

Explained.

2. 'The rest.'] Those who are excluded from participating in the estate—'Affection.'—Love.—'Subsistence.'—Alimony.

Yama on the same topic.

3. Yama also.—"Sons are pronounced by intelligent saints to "be twelve: of these, six are kinsmen and heirs; and "six kinsmen but not heirs. Those versed in the "distinctions of class declare that the first is the one "begotten by the man himself: the second, the son of the wife; the

Annotations.

3. These six whose filial relation, &c.] The terms of the original are 'etesangamotpannah.'—This expression disjoined may be construed as containing, or not containing, before sangama a privative *a*. According to either mode of construction, a difficulty presents itself of rendering the compound epithet of *ete* (these) so as to apply to the six sons alluded to, and not be applicable to the other six.—The Sanscrit reader will perceive that a translation has been adopted, which it cannot be pretended, is suggested obviously by the terms of the text.

" third, the son of the appointed daughter; the fourth, the son of the " twice-married woman; the son of the unmarried daughter is consi- " dered the fifth: and [the sixth,] the son secretly born in the man's " house.' These six present funeral oblations—The son deserted, and " the one received with a pregnant bride, the son given, and the son " made, and fifthly, the son purchased, and the son presented by him- " self; These six, whose filial relation proceeds from an overt act of " acceptance are kinsmen but not heirs."

Narada on the same subject.

4. Nárada. "The real legitimate son; the son of the wife by " appointment; the son of an appointed daughter; " the son of an unmarried daughter; the son received " with a pregnant bride; the son of hidden origin; " the son of a twice-married woman; the deserted son; the son given; " the son purchased; the son made also; and the one given by himself; " these are declared to be the twelve descriptions of sons. Of these, " six are heirs to kinsmen and six not heirs to kinsmen. Each ac- " cording to priority in order is considered as superior; and the last " successively as inferior. On the death of the father, according to " their order they succeed to his estate. On defect of each preceding " more worthy, let the next less worthy son obtain the estate."

Explanations.

5. The meaning is on default of each preceding, the next succeeding in order is entitled to the property.

Vishnu also.

6. After having previously enumerated as sons, the real legitimate son of the wife, the son of an appointed daughter, the son of a twice-married woman, the son of the unmarried daughter, the son of hidden origin, the son received with a pregnant bride, the son given, the son purchased [the son made], the son self-given, the deserted son, and the son obtained in any manner whatsoever; Vishnu adds "of these, the first in order respectively " is the most worthy; he only is entitled to the estate; but he should " support the rest."

Yájñavalkya.

7. After having enumerated, the legitimate son, the son of the appointed daughter, the son of the wife, the son of hidden origin, the son of an unmarried daughter, the son of the twice-married woman, the son given, the son purchased, the son made, the son self-given, the son received with a bride, and the deserted son, Yájñavalkya subjoins:—"Amongst these, the next in " order is heir, and presents funeral oblations on failure of the pre- " ceding."

Manu.

8. Manu.—"Not brothers nor parents; but sons are heirs to the " deceased." And again, "On failure of the best and " of the next best, let the inferior in order take the " heritage; but if there be many equal, let all be sharers of the estate."

9. 'Equal.'—In respect to virtue or quality as being legitimate, the son of the soil or wife and so forth.—'Of the best,' —that is of the legitimate son and the others.—'The inferior in order,' the less worthy :—Meaning the son of the wife and those following.

Explanation.

10. The same author.—"The son of the body and the son of the "wife may succeed to the paternal estate; but the "ten other sons can only succeed in order to the "family duties and their share of the inheritance."

Another text of the same author.

Hárita cited.

Hárita.—"The son begotten by the man himself, "the son of the wife, the son of the twice-married woman, the son of "the appointed daughter, and the son of hidden origin or kinsmen and "heirs. The son given, the son purchased, the son deserted, the son "received with a pregnant bride, the son self-given, and the son any "how obtained are heirs but not kinsmen."

11. Manu.—"Of the twelve sons of men, whom Manu sprung "from the self-existent has named, six are kinsmen "and heirs: six not heirs, but kinsmen. The son "begotten by a man himself, the son of the wife, the son given, the son "made, a son of concealed birth, and a son rejected, are the six kinsmen "and heirs.—The son of an unmarried daughter, the son of a pregnant "bride, the son bought, the son of a twice-married woman, the son self-"given, and the son by a Çúdra are the six kinsmen but not heirs."

Manu.

12. Baudháyana.—"He pronounces the real legitimate son, the "son of an appointed daughter, the wife's son, the "sons given and made, the son of concealed origin, "and the deserted son also participators in the estate,—the son of an "unmarried daughter, the son received with a pregnant bride, the son "bought, the son of a twice-married woman, also the son self-given, "and the Nisháda, or son of a Çúdra, he pronounces partakers of the "family."

Baudháyana.

13. This declaration, that the son of the unmarried daughter and the rest participate in the family only, is for the sake of barring their taking a share of the heitage, where, one even of the others before enumerated, viz. the real legitimate son and the rest may exist.

Explanation.

14. Vasishtha having previously mentioned, the son received with a pregnant bride, the son bought, the son self-given, the deserted son, and the son by a Çúdra woman: and alluding to the legitimate son, and the rest in another place says: "Where there may be no heir to a person of any of the tribes, let "these take the heritage."

Vasishtha.

15. Devala having recited the real legitimate son, the son of an appointed daughter, the wife's son, the son of an unmarried woman, the son of secret origin, the deserted

Devala.

son, the son received with a pregnant bride, the son of a twice-married woman, the son given, the son self-given, the son made, the son purchased adds: "Those twelve are pronounced sons for the sake "of issue: some are sprung from himself: some from another also: "some acquired by [an overt act of adoption]: and others filially re-"lated independent thereof. Of these, the first six are kinsmen and "heirs [to collaterals], the rest are so merely to the father: and a special "rule obtains, according to the priority in rank of the sons: all these "sons are considered as heirs, to one having no real legitimate son; "but should a son be subsequently born, no right of primogeniture "attaches to them. Of these, those who are equal in class take a "third share; but those inferior in rank should live in subjection to "one of equal rank receiving maintenance."

Kátyáyana.

16. Kátyáyana—"If a legitimate son be born, the rest are pro-"nounced sharers of a third part provided they "belong to the same tribe: but if they be of a differ-"ent class, they are entitled to food and raiment only.—In some copies "the reading is—"are pronounced sharers of a fourth part *(a)*."

Vasishtha.

17. Vasishtha.—"When a son has been adopted, if a legitimate "són be afterwards born, he shares a fourth part "provided [the estate] may not have been expended "in acts of merit."

Explanation.

18. 'He'] the adopted son. 'Provided' the whole estate (which is understood) may not have been expended by the legitimate son in acts of merit,—that is in sacrifice, and so forth.

The apparently conflicting authorities, cited, are reconciled.

19. For the sake of removing the conflicting contradictions of several varying texts of Manu and the rest, the following interpretations are offered on these texts. The declaration in Vrihaspati's text, that the real legitimate son succeeds exclusively to the estate, and that the rest are entitled merely to subsistence, regard such sons of the wife and the rest who are unequal in class, on account of uniformity

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Annotations.

16. Sharers of a third part.] In citing this text, the author of the Mitákshára adopts the reading which gives a fourth part. "This reading (observes Mr. Colebrooke*) "is followed in the Madana-parijáta Viramitrodaya, &c. But the Kalpataru, "Ratnákara and other compilations read 'a third part' —vide Jimúta-váhana C. 10 § 13."

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* V. translation of Mit: on Inh. note to ch. Sect. XI. § 25.

(a.) See 1 Mad. H. C. Rep. 94.

with text of Kátyáyana and Devala. And the rule also in the texts of Nárada and the rest, for the succession of the son given and the rest to the estate, on default of the son of the wife, and the rest, regards their succession to the whole estate, and therefore the rule for the fourth of the share of the real legitimate son propounded by Vasishtha, where such son may be born subsequent to the adoption of a son given must be understood as applying to a son given.'

The rule for the third share propounded in §§ 15, 16, is relative to the given son, eminently endued.

20. So, also the rule for succeeding to a third share in the texts of Devala and Kátyáyana, must be alleged to refer to a son given, endued with eminent qualities, on account of uniformity with the following text of Manu. —"Of the man to whom a son has been given, "adorned with every quality that son shall take the "heritage, though brought from a different family"— 'With every quality'] class, science, observance of duties.

Some construe it as referring to the son of the wife.

21. Others affirm it must apply to the son of the wife in conformity with this passage in the Brahma Purána: "Let the real legitimate son even, who is subse-"quently born enjoy the whole estate—the son of "the wife takes a third share, the son of an adopted "daughter a fourth."

The distinction of quality, also reconciles, the apparently conflicting doctrines of authors, that the adopted son is and is not heir to kinsmen.

22. In the same manner the doctrine of one holy saint that the son given is an heir to kinsmen,—and that of another, that he is not such heir,—are to be reconciled by referring to the distinction of his being endued with good qualities or otherwise. By reason of succeeding to the estate of sapinda kinsmen, as well as to that of the father, he is [argued by the one to be] heir to kinsmen; and on account of the particle 'only' in the phrase "of the father only" (occurring in the passage subjoined) from inheriting merely of the father, he is [argued by the other, not to be] such heir.—"Of these, the first six are heirs to kinsmen: the other six of the father only.'

And also the variation of rank assigned him by different authors in the series of heirs.

23. And thus [the objection of] variation from the son given being enumerated higher and lower in the order of inheritance, and so forth, by different holy saints respectively, is obviated by the distinction as to his qualities good and bad.

Conclusion, that the adopted son inherits collaterally.

24. Therefore, by the same relationship of brother, and so forth, in virtue of which the real legitimate son would succeed to the estate of a brother or other kinsmen, where such son may not exist [the adopted son] takes the whole estate even.

25. Since it is a restrictive rule, that a grandson succeed to the appropriate share of his own father, the son given, where his adopter is the real legitimate son of the paternal grandfather, is entitled to an equal share even with a paternal uncle, who is also such description of son; therefore, a grandson, who is an adopted son may [in all cases,] inherit an equal share even with an uncle.—This must not be alleged, [as a general rule]. For, there would be this discrepancy: where the father of the grandson were an adopted son, he would receive a fourth share:, but the grandson, if he were such son, [of him] would receive an equal share [with an uncle in the heritage of the grandfather]. And accordingly, whatever share may be established by law, for a father of the same description, as himself; to such appropriate share of his father, does the individual in question, [viz., the adopted son of one adopted] succeed. Thus what had been advanced, only is correct. The same rule is to be applied by inference to the great-grandson also.

Objection, that the grandson being the adopted son of an adopted son would share equally with an uncle, in the heritage of the grandfather.

Over-ruled.

26. But, although the son of the wife, the son given, and the rest may succeed to the general estate, their non-succession to empire is advanced.—Thus it is ordained in the Védas.—" The legitimate son, the son of the wife, " the son given, the son made, the son of concealed " birth, and the son rejected, take shares of the heri- " tage. The son of an unmarried girl, the son of a " pregnant bride, the son bought, the son of a twice- " married woman, the son self-given, and the slave's " son, these six are contemptible as sons: on failure " of the first in order respectively, let him invest the next with filial " rights. But let him not appoint to the empire the son of a twice- " married woman, nor a son self-given, nor one born of a female slave" " —In the same authority also—" Let not the king invest in the " empire the wife's son and the rest: [nor] cause to be completed " through such sons the solemnities for his fore-fathers, a legitimate " son, existing."

An opponent alleges that the adopted son may not succeed to empire whatever be his right to the general estate: as would appear from two passages from the Védas.

27. It is replied--If another ordinance of law exist, a special rule for the sake of convenience [must be construed] as conveying even the same meaning. Therefore, the first passage cited, which is declaratory of the right to succession of the next in order, on failure of each preceding extends even to the whole empire, as conforming with the texts of Nárada and the rest before mentioned: and the latter passage prohibits the equal participation of the son of the wife and the rest, if a legitimate son exist, or it refers to a son of the wife and the rest unequal in class: otherwise it would be vexatious were adverse meanings deduced from each passage. But if however this is admitted [and disregarded,] then [we allege] that by the passage in question, the appropriate shares of the son of

His objection is obviated. The two passages are consistent, and such general position cannot be deducted.

the wife, the son given and the rest respectively are not forbidden if a real legitimate son exist; but the investing such son with empire is ordained [by that author] after having previously barred the same in respect to those sons, in case of the existence of a real legitimate son.

Conclusion.

28. Thus, the son of the wife, the son given, and the rest receive the share prescribed for them by the general law. For grounds for contracting the operation of the same are wanting: nor does the particular passage in question obstruct its operation: for that relates to a different subject. Accordingly, their right to inherit is clearly laid down in the preceding passage,—"take shares of the heritage." Nor can it be said they participate [merely] in the estate other than the empire. For the empire also is treated on in the passage in question. The exclusion of the son of the twice-married woman and the rest from the empire, although each preceding in order may have failed, is in virtue of a distinct provision in respect to them.

In the Çúdra tribe the partition for the adopted son is different.

29. The mode, however, of partition between the son of the wife, the son given and the rest and the legitimate son, which has been propounded in what preceded does not apply to the Çúdra tribe.

He shares equally with the legitimate son during the father's life, and at a partition subsequent to the father's death takes the moiety of the share of the legitimate son as is intimated by, Manu, Yájñavalkya.

30. Since, in the following texts of Manu and Yájñavalkya respectively, a share equal to that of the real legitimate son is prescribed for the son even by a female slave of a man of the class in question; and the co-heirship with the daughter's son of such son only when having no brother is intimated; the equal partition of the son of the wife, the son given and the rest, with the real legitimate son whilst the father lives, and their succession to the moiety of the share of such son, where the father may be dead at the time of partition, follow a fortiori.—And otherwise there would be a great inconsistency if, where the son of the wife, the son given, and the rest took the fourth of the share of the legitimate son, the son by a female slave, whose title is infinitely inferior in respect to these, were to take an equal share, the legitimate son. Manu—"But a son, begotten by a man of the servile "class, on his female slave or on the female slave of his male slave may, "by permission, take a share of the heritage. Thus is the law estab-"lished. Yájñavalkya: "Even a son, begotten by a Çúdra, on a female "slave may take a share by the father's choice. But if the father be "dead, the brethren should make him partaker of the moiety of a share; "and one who has no brothers, may inherit the whole property, on "default of daughter's sons."

31. If according to this authority, where there may be no son of the wife and the rest, but there may be a wife and daughters, the daughter's son be entitled to share [with the son by a female slave]; the rule for the succession of the daughter [or other proper heir] would be infringed; therefore, if any even in the series of heirs down to the daughter's son exist, the son by a female slave does not take the whole estate; but on the contrary shares equally with such heir.

The term 'daughter's son,' occurring in the text of Yájñavalkya, is merely illustrative.

32. Accordingly, the text subjoined must be construed as referring merely to Çúdras. "A son given being thus "adopted, if by any chance, a legitimate son should "be born, let them be equal partakers of the father's "estate."* So also in the following text, the equal participation of all lawfully begotten Çúdras having been first propounded, the succession to equal shares, of the other sons likewise is subsequently declared by the sentence, ("if there be an hundred sons") occurring therein. "For a Çúdra is ordained a wife, "of his own class and no other. Those begotten on her shall have "equal shares; if there be an hundred sons [the same mode of partition "shall obtain]."† If the sentence in question be referred to the real legitimate son only, the position contained in it being obtained from what preceded, its repetition would be unmeaning.

Other authorities cited refer to Çúdras, and support the doctrine advanced.

33. The son given, who is a Dvyámushyáyaṇa, if both his adoptive and natural fathers have no other male issue, takes the whole estate [of both]: one adopted, where legitimate issue [of the adopted] existed does not participate [in the estate of the adopter]; but a legitimate son being born [to the natural father] subsequent to the adoption, [the adopted son] takes half of the share of a legitimate son. If [however such issue be subsequently born to the adopter, the adopted son in question] takes half of the share which is prescribed by law for an adopted son, exclusively related to his adoptive father, [where legitimate issue may be subsequently born to that person.]

The right by inheritance of the Dvyámushyáyaṇa, in the estates of his natural father and adoptive father respectively.

Annotations.

31. If according to this authority.] The text of Yájñavalkya provides that the son by a female slave who has no brothers, shall not take the whole estate where there may be a daughter's son.—Thence, it is inferred that the daughter's son shares with him.—It is the object of the author to shew that the term 'daughter's son' is not restrictive in its sense, but includes any heir, enumerated in the series after the son down to the daughter's son; viz. the wife, the daughter, the daughter's son.

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* Vriddha Gautama. † Manu 9, 169.

34. The Pravarádhyaya declares this—"Should they have no "offspring begotten on their wives, [the adopted "sons] take the whole estate."—A text of Nárada "also [declares.] "Let those, being sons to both "fathers, present separately to each, oblations of food and water; "they take the half of a share in the estate of the contributor of "the seed and owner of the soil:" It has been before said, that the terms contributor of the seed and owner of the soil are illustrative severally of the natural and adoptive fathers.

Confirmed by passages cited.

SECTION VI.

Exclusion from inheritance, in what cases.

1. As sons blind, lame, and so forth do not inherit—and since it is ordained that their legitimate son and son of the wife only participate in the estate of the paternal grandfather; a son given, or other description of son, adopted by such persons, have no right to the estate of the paternal grandfather; but to maintenance only. For alimony being provided for the wives of persons blind and so forth, maintenance for their adopted sons is inferred a fortiori.

The adopted son of a disqualified person cannot inherit in, but takes alimony from the estate of his paternal grandfather.

2. So also having previously declared sons blind, lame and so forth not to be heirs, an author adds—"Of these "the sons legitimate and sons of the wife, who are "free from defect participate in a share: the childless "wives of those, [who are blind, and so forth] are to be supported "if virtuous. Their daughters are to be maintained as long as un- "married."

A certain author shews this.

Annotations.

1. And since it is ordained that their legitimate son, &c. &c.] The following is a text of Yájñavalkya.—"But their sons, whether legitimate, or the offspring of the "wife by a kinsman are entitled to allotments if free from similar defects." On this, the author of the Mitákshará thus comments—"The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.'

One adopted, by a man having legitimate issue, and generally without observance of form does not inherit as appears from Manu.

3. In the same manner—since it is shewn that a son given participates with a real legitimate son born subsequent to his adoption—a son adopted, where a legitimate son exists does not take a share. Accordingly, an author declares the non-succession to a share of one adopted without observance of rule:—"Him existing, a son being created, and a son given, "existing, one being adopted informally; that estate "is his only, who is justly master of the father's "wealth"—Manu. "He, who adopts a son without observing the rules ordained, should "make him the participator of the rites of marriage, not a sharer of "the wealth."*

Nor can an adopted son of a different class inherit as is shewn by Çaunaka.

4. It is declared by an author in the following text, that a son given likewise, who is of a different class does not inherit. "If one of a different class, should however "in any instance have been adopted as a son, he "should not make him the participator of a share. "—This is the doctrine of Çaunaka." Something to this effect has been before declared.† Sufficient has been said.

Peroration.—This treatise, succinctly exhibiting the rules relative to the adopted son is excellent, and the heart-delighting preserver of law through the serious application of students. Thus is the Dattaka-Chandriká, compiled by the great preceptor, the fortunate Devaṇḍa-Bhaṭṭa, completed.‡

FINIS.

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* This text is not found in the institutes of Manu, v. D. M. Sect. V. § 45.

† Vide supra Sect. I. § 14.

‡ The printed copy, as well as manuscripts read Kuvera. As however the author avows himself to be the writer of the Smriti-Chandriká, which is known as the production of Devanda-Bhatta, this name in the translation has been substituted.

A SYNOPSIS,

OF THE

HINDU LAW OF ADOPTION.

TRANSLATED BY J. C. C. SUTHERLAND.

CONTENTS.

A SYNOPSIS OF THE HINDU LAW OF ADOPTION.

A

SYNOPSIS

OR

GENERAL SUMMARY

OF THE

HINDU LAW OF ADOPTION.

THE Hindú Law of Adoption may be classified under the following Heads:

1st. The qualification and right to adopt.

2nd. The qualification and right to be adopted.

3rd. The form to be observed in adoption and the effect of its omission.

4th. The effects of adoption.

5th. Special rules.

v. D. M. Section I. § 64, 65.
v. D. Ch. Section I. 9.

It should be premised, that in the present age, amongst the various subsidiary sons* recognized in codes of law, according to the authority of writers, confirmed by practice, only those technically denominated, the son given (Dattaka or Dattrima) and son made, (Kritrima or Krita) are capable of being affiliated.† The author of the Dattaka or Chandrika, indeed admits the son given alone. In effect however, without any great latitude, a son self-given, and a son rejected, might perhaps be included‡ under the general denomination of the 'son made' the Kritrima or Krita putra (vulgarly called 'Karta puter'): and it should not be omitted, that in treatises of law, the term Dattaka or son given is sometimes used to denote an adopted son generally.

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* See these enumerated in a Note § 33, Sect. I. D. M.

† v. Notes I. and II. subjoined ‡ v. Note III. subjoined.

HEAD FIRST.

The qualification and right to adopt.

The primary reason for the affiliation of a son, being the obligatory necessity of providing for the performance of the exequial rites *(a)*, celebrated by a son, for his deceased father, on which the salvation of a Hindú is supposed to depend, it is necessary that the person proceeding to adopt should be destitute of male issue capable of performing those rites. By the term issue, the son's son and grandson are included. It may be inferred, that if such male issue, although existing, were disqualified by any legal impediment, (such as loss of caste), from performing the rites in question, the affiliation of a son might legally take place.

D. M. Section I. § 3.
D. Ch. Section I. § 3.
D. M. Section I. § 6.
D. M. Section I. § 13.
D. Ch. Section I. § 6.

A doubt might be entertained* as to the validity of an adoption, by one not being in the order of the 'Grihí' (the house-holder or married man) or by a blind, impotent or other person disqualified from inheriting. The more correct opinion, however appears to be, that an adoption by any of the persons described would be valid: though it seems reasonable, that the affiliation of one excluded from inheritance, should confer no right of succession on the adopted, of which the adopter is debarred by law.

D. Ch. Section V. I.

The same reason which imposes the necessity of adoption on a man not equally applying to a woman, the latter (at least such seems the more accurate and prevailing doctrine) is incapable in her own right of adoption,† though it is admitted that by his sanction‡ she may affiliate on the part of her husband a son who would necessarily be filially related to himself. Nanda Pandita denies generally the authority of a widow to adopt, assigning a reason by no means satisfactory, that the assent of her husband is impossible: but it is reasonable to admit, consistent with practice, and the opinion of other authors, the validity of an adoption made by a widow under the sanction of her husband written or formally expressed during his life-time, and perhaps in some places under that of kinsmen.

D. M. Sect. I. § 15, 29.
D. Ch. Sect. V. § 7.
D. Ch. Sect. I. § 24.
D. M. Sect. I. § 15, et. seq.

(a) See 4 Moore, I. A. Ca. 100.

* v. Note IV. subjoined.

† v. Note V. subjoined. ‡ v. Note VI. subjoined.

HEAD SECOND.

The qualification and right to be adopted.

The first and fundamental principle is that the person proposed to be adopted, be one who by a legal marriage with his mother might have been the legitimate son of the adopter. By the operation of this rule, a sister's son and offspring of other female, whom the adopter could not have espoused, and one of a different class are excluded from adoption. In the present age, marriage with one unequal in class is prohibited.

D. M. Sect. V. § 16, et. seq. D. Ch. Sect. II. § 8.

Nanda Pandita declares that a woman may not affiliate a brother's son: if his opinion be correct, it might be consistently argued, that where a woman is proceeding to adopt with the sanction of her husband or kindred, she must not select generally one with whose father she could not have legally married.

D. M. Sect. II. § 33, 34.

It is an obvious inference, that the person selected should be exempt from any disqualification, which might prevent him fulfilling the purpose of the adoption. It has been intimated by writers on law,* that proximity of kindred ought to determine the choice of an adopted son. But though Nanda Pandita extends this principle with elaborate minuteness, it cannot be regarded as a rigid maxim of law, vitiating the adoption of a remote, where a near kinsman, or of a stranger, where a relative may exist. The right however of a whole brother's son to be adopted in preference to any other person, where no legal impediment may obtain, seems to be generally admitted, and may be regarded as a received rule of law.

D. M. Sect. II. § 11, 12. et seq. D. M. Sect. II. § 28, 37. D. Ch. Sect. I. § 20. Mitáksharà.† Dvaita Nirnaya.

An only son‡ cannot become an absolutely adopted son (Sudha-Dattaka,) but he may be affiliated as a Dvyámushyáyana or son of two fathers. In this case, the reason of the prohibition, viz., extinction of lineage to the natural father would not apply. An only son of a whole brother accordingly, if no other nephew exist for selection must be adopted by his uncle, requiring male issue and is son of two fathers. The same person cannot be adopted by more than one individual, ex-

D. M. Sect. IV. § 1, 3. D. Ch. Sect. I. § 29. D. Ch. Sect. III. § 17. D. M. Sect. II. § 37, 38. D. Ch. Sect. I. § 28.

* Vasishtha, Çaunaka, &c.

† Trans. on Inh. Chap. I. Sect. XI. § 36.

‡ v. Note VII. subjoined.

D. M. Sect. I. § 30.
D. M. Sect. II. § 44.

cept in the case of one nephew by several uncles, the whole brothers of his natural father. It may however be inferred, that a legal impediment would exist to the affiliation by an uncle of a nephew, whom his father had given away in adoption as a 'Sudha-Dattaka,' who retains no filial relation to his natural father.

D. M. Sect. IV. § 9. et seq.
D. Ch. Sect. I. § 7, 31, 32.

To render the adoption valid and complete, it is necessary that the person adopted should assent, or being a minor, be given by a competent party.* On the subject of the legal ability to give a son in adoption, some difficulty exists in extracting a consistent doctrine.† The more correct opinion appears to be—1st. That, the father may give away his minor son without the assent of the mother, though it is more laudable that he should consult her wishes.—2d. That the mother generally is incapable of such gift while the father lives.—3d. That she however on her husband's death may give in adoption her minor son, and even during the life of that person in case of urgent distress and necessity. A man who had permanently emigrated entered a religious order or become an outcaste, being civilly dead would be regarded as virtually deceased.

Discrepancy of doctrine amongst some writers, and the silence of others have left doubtful the determination of these questions;—1st. Whether the adoption of one, who has attained any particular age is barred;—2d. Whether the performance, in the family of the natural father of any, and what particular initiatory rites constitutes an insuperable objection to being adopted.

On the subject of these questions, a passage attributed to the Kálika Purána, (the authenticity and meaning of which are contested) is usually cited.‡ According to Jagannátha, the compiler of the Digest, this constitutes an absolute prohibition against any adoption whatsoever, of one, whose age exceeds five years, or on whom, the initiatory rite of tonsure may have been performed in the family of his natural father.§ And, in a case‖ in which the adoption of one older than five years was contended to be illegal, on the opinion of its Pandits,—declaring according to the Hindú law, as received in Bengal, the adoption of such person to be legal, provided the initiatory rites (sanskárá) in the family of the natural father have not been and in that of the adopter be performed—the Sadr Diwáni Adálat appears to have determined the following points, as applicable to Bengal, where, it should be observed, the Dattaka form of

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* v. Note VIII. subjoined. † v. Note IX.

‡ v. D. M. Sect. IV. § 22; et. D. Ch. Sect. II. § 25.

§ v. Digest Ch. IV. Sect. VIII.

‖ v. Printed reports on select cases.—Kerut Naraen versus Mt. Bhobioesree.—Cause No. 22 of 1805.

adoption chiefly, if not solely, prevails*—1st. That adoption is restricted to no particular age.—2d. That, one initiated in tonsure in the name and family of his natural father, is incapable of adoption.—3d. That the age of the person selected for adoption must be such as to admit of the ceremony of tonsure being performed in the adopter's name and family.

The limitation of adoption to any particular age is thus overruled: but without presuming to question as applicable to Bengal the accuracy of the other two points of law resulting from the decision referred to, there is no impropriety in expressing a doubt, whether they can be received as constituting a general rule universally decisive on the questions which they regard.—1st. Such rule would be at variance with the doctrines of the Dattaka Mímánsá, and Dattaka Chandriká, as detailed in a note subjoined.†—2d. The authenticity of the passage, attributed to the Kálika-puráṇa, on which the opinion of Jagannátha and the Paṇḍits of the Sadr Diwáni is founded is justly denied, and it is interpreted as admitting the adoption of one, although initiated in tonsure by his natural father.—3d. The received definition of the Kṛitrima son, and particularly the mode of affiliation‡ current in the Maithila country, obviously refer to one of years somewhat mature, who, if not necessarily, would mostly be initiated in tonsure by his natural father: and the adoption of such person is certainly justified by practice obtaining in some parts of India.

The difficulty, or rather impossibility of defining any unvarying principles, universally decisive on the questions referred to is obvious. The most general and consistent rule which presents itself is this.§—Any person, on whom the adopter may legally perform the Upanayana rite‖ is capable of being affiliated as a Dattaka son: while one, not so qualified may be lawfully adopted as a Kṛitrima son.

HEAD THIRD.

The form to be observed in adoption, and the effects of its omission.

Regarding the mode of adoption, a text of Vasishṭha is most usually cited. This enjoins, that the party proceeding to adopt should previously give notice to the ruling

v. D. M. Sect. V. § 31.

* v. Note X. subjoined. † v. Note XI.

‡ See that propounded by Rudra Dhára in Note XVI.

§ v. Note XII. subjoined.

‖ For the rules, for performing the rite of Upanayana; consult D. Ch. Note to Sect. II. § 31: and for the designation and order of the different initiatory rites, see D. M. Note to Sect. IV. § 23.

D. M. Sect. V.
D. Ch. Sect. II.

power (Rájá), and after having invited kinsmen, should complete the adoption by the observance of the prescribed solemnities, viz., a burnt sacrifice and recitation of the prescribed prayers. The forms propounded at greater length by Çaunaka, Vriddha Gautama, Baudháyana and other primitive writers, essentially conform with this of Vasishtha. The former provide for the attendance of Bráhmanas, and an officiating priest, to demand the son to be given.

D. Ch. Sect. II. § 6.

The expression 'Rájá' has been explained by commentators to signify the chief of the town or village. They seem however agreed,* that, the notice enjoined, and the invitation of kinsmen are no legal essentials to the validity of the adoption being merely intended to give greater publicity to the act, and to obviate litigation and doubt regarding the right of succession.

The form propounded by Vasishtha; and more particularly those by the other holy writers, in pursuance of the works of eminent authors, may be correctly regarded, as referring exclusively to the son given;† the adoption of a Kritrima son being held to be valid, without the observance of any particular form or solemnities.‡

D. M. Sect. V. § 45 & 46.
D. Ch. Sect. II. § 17.
D. Ch. Sect. VI. § 3.

Should a son be adopted without the observance of prescribed form, his filial relation would not be established, but he would be entitled to assets sufficient to defray the expense of his marriage.

D. M. Sect. IV. § 22. et. seq.
D. Ch. Sect. II. § 2. et. seq.

The Dattaka adopted son, except perhaps in the case of a nephew affiliated by an uncle must be initiated in certain rites in the name and family of his adoptive father, and the Kritrima son, in some instances may, but in all, need not necessarily be so initiated:§ The question as to the particular rites required has already been discussed under the preceding head.

HEAD FOURTH.

The effects of adoption.

D. M. Sect.
D. Ch. Sect. V.

The legally adopted Dattaka or son given in all cases is, and the Kritrima or son made in some instances may be, invested with every filial right in respect to his adoptive father, of whose family he becomes a member.||

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* v. Note XIII. † v. Note XIV. ‡ v. Notes XV & XVI.
§ v. Note XVII. || v. Note XVIII.

The Dattaka adopted son ceases to have any claim to the family or estate; and is incapable of performing the funeral rites of his natural father, except where affiliated as a Dvyámushyáyaṇa, or son of two fathers. This rule would not apply to the Kritrima adopted son, who would be necessarily the son of two fathers,* unless, (if such case could occur), where wholly uninitiated in the family of his natural family.

D. M. Sect VI. § 6. 7.
D. Ch. Sect. II. § 18. 19.

The adopted son cannot marry any kinswoman related to his father and mother within the prohibited number of degrees as his consanguineal relation endures: nor the son of two fathers marry in the general family of either.

D. M. Sect. VI. § 10 & 47.

The adopted son not only inherits of his adoptive father, but likewise lineally and collaterally† of the near and distant kinsmen of that person. He likewise represents the real legitimate son, in relationship to his adoptive mother, whose ancestor are his maternal grandsires. The rule however now suggested, would not apply to the Kritrima son as usually adopted in the Maithila country.‡

D. Ch. Sect. IV. § 2. et. seq.
D. M. Sect. VI. § 50. 51. 52.

HEAD FIFTH.

Special Rules.

Firstly.—Regarding the Dvyámushyáyaṇa.

The adopted son may retain filial relation to his natural father, in which case, he is called a Dvyámushyáyaṇa or son of two fathers. This double filial relation proceeds from a special agreement, between the adoptive and natural father, at the time of adoption, or may exist without such agreement; as mostly, if not always, in the case of the Kritrima adopted son, who is not alienated by his natural father. In the first case, such son is denominated a complete (nitya) in the second an incomplete (anitya) Dvyámushyáyaṇa.

D. M. Sect VI. § 41. et seq.
D. Ch. Sect. II. § 36 et seq.

The adopted son, who is son of two fathers, inherits the estate and performs the obsequies of both fathers, but the relation of his issue (except in the case of the Kritrima son, as usually affiliated in the Maithila country,), obtains exclusively to the family of the adoptive father.

D. M. Sect. VI.

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* v. Note XIX. † v. Note XX. ‡ v. Note XXI.

Secondly.—Regarding the succession of the adopted son.

Thirdly.—Regarding the succession of co-existent legitimate and adopted sons.

D. M. Sect. V. § 40.
D. M. Sect. X. § 1.
D. Ch. Sect. V. § 17.

Where, subsequent to an adoption legally made, a legitimate son is born to the adopter, the adopted son, at a division of heritage with such son, receives a quarter share* according to the Dattaka-Chandriká. A distinction however obtains in the case of the Dvyámushyáyaṇa— From an obscure part of that work,' it would appear to be the doctrine of its author, that such son, would only take half the share, to which the son absolutely adopted, would be entitled, in participating with a legitimate son, subsequently born. On the same principles, this author appears to provide that, where legitimate issue is subsequently born to the natural father, the Dvyámushyáyaṇa only takes in the estate of such father, the half of the share of a legitimate son.

ILLUSTRATIVE NOTES REFERRED TO IN THE PRECEDING SYNOPSIS.

NOTE I.

Only those technically denominated, the son given, &c. (p. 323)]. On the subject of sons, to be affiliated in the present age, the two texts of law quoted in D. Ch. Sect. I, § 9, are usually cited. The term 'son given,' occurring in the latter, is explained in the Vyavahára-Mádhava† and other works, as likewise denoting the 'son made'— The Putriká-putra does not appear to be regarded as a subsidiary son,‡ and it is not unreasonable to infer, that the affiliation of such son, would be valid in the present age. The term 'aurasa' or 'legitimate son,' occurring in the text noticed, might consistently be construed as also indicatory of the 'Putriká putra.' This term is used to denote a daughter, appointed to be a son, the one appointed to raise up issue, and the son of either. Yájñavalkya declares the Putriká-putra to be equal to the real legitimate son,§ and Manu propounds that there is no difference between a son and an appointed daughter, and a son's son, and the son of such daughter.|| Further;

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* v. Note XXII, subjoined.

† A commentary on Parasara current, in Western and Northern India.

‡ Sect. D. Ch. Sect. I. § 8.

§ 2, 120. cited in Trans. of Mit. on Inh. Ch. I. Sect. XI.

|| 9, 130, 133.

an equal division of the heritage is ordained between the Putriká-putra, and a real legitimate son subsequently born. It should be observed however, that Jímúta-Váhana denies that a daughter, appointed to raise issue, can acquire any superior right, unless she bear or be likely to bear a son.*

NOTE II.

The 'son given' (Dattaka or Dattrima) *and 'son made'* (Kritrima or Krita) (p. 323)]. For the description of the 'son given' by Manu, see D. Ch. Sect. I. § 12. The same author thus describes the son made.—"He is considered as a son made, whom a man takes as his "own son, the boy being equal in class, endowed with filial virtues, "acquainted with the merit of performing obsequies to his father, "and the sin of omitting them."—Vijñáneçvara in the Mitákshará and Visveçwara in the Madana-parijáta intimate, that the son made should be an orphan.†

NOTE III.

A son self-given, and a son rejected (p. 323)]. These are described by Manu (v. Translation by Sir William Jones, Ch. IX, verse 167, et seq.) The author of the Mitákshará and other writers provided that these sons should be of the same tribe.

NOTE IV.

A doubt might be entertained (p. 324)]. The expression 'aputra,' —destitute of male issue, occurring in the texts of Manu cited as authorities for adoption is explained as intending,—one whose son may have died, and one to whom no son may have been born.‡ The first explanation obviously, and the second by implication, may be construed as solely referring to the 'Grihí' or married man. Again, Medhátithi declares that the scriptural precept enjoining the production of a son must positively in some way be fulfilled by a person of the description noticed.§ These however do not appear sufficient grounds to pronounce the illegality of an adoption made, generally by a man who may not have married(a) or still less, one whose wife may have died. In fact, the passage in question of Medhátithi may be regarded as merely enjoining the more obligatory necessity for a married man, having no male issue to adopt a son. Jagannátha, in the Vaváda-bhangárnava or Digest, translated by

* Consult generally Trans. of Dáya-bhága, Ch. X; and of Mit. on Inh. Ch. I. Sect. XI.

† v. Trans. of Mit. on Inh. Ch. I. Sect. XI. § 17, et note.

‡ v. D. M. Sect. I, § 3, 4, 9, and D. Ch. Sect. I. § 3, 4.

§ See D. M. Sect. I. § 60.

(a) See 1 Morl. Dig. 16.

Mr. Colebrooke expressly rejects as erroneous the doctrine which would restrict adoption to a man in the order of the Grihí.* It may be observed that as marriage is one of the last of the perfective rights, necessary to complete the regeneration of 'the twice-born,' celibacy is scarcely known amongst the Hindús. The individuals excluded from inheritance are, "the impotent person, the outcast and his issue, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, and others similarly disqualified." The admissibility of a doubt as to the legality of an adoption by such persons is suggested with reference to a passage in the Mitákshará, which declares, that the specific mention of 'the ligitimate son' and 'son of the wife' in a text of Yájñavalkya, providing for the inheritance of such sons of disqualified persons, is intended to forbid the adoption by them of other sons.† The author of the Dattaka Chandriká likewise, arguing from the same or a parallel text that an adopted son is not ordained for disqualified persons, excludes such son of those persons from succeeding to the estate of the paternal grandfather.‡ In the absence, however, of other authorities, those alluded to can hardly be admitted as sufficient to establish a general rule vitiating in toto, the adoption by one excluded from inheritance. In fact, the author of the Dattaka Chandriká, without advancing such position, merely denies the right of one so adopted to inherit of his adoptive grandfather, and perhaps no more was intended by the author of the Mitákshará.

NOTE V.

Is incapable in her own right of adoption (p. 325)]. This position may be questioned, and does not appear to be a generally received rule. In the tract of country denominated Maithila, a custom prevails of the adoption by a widow of a Kṛitrima son, for the performance of her Sapiṇḍikaraṇa, or right of association with departed ancestors, the observance of which, on the eleventh day from her decease, exempts the other relatives who are unable to celebrate such ceremony from observing in her honour, (as they otherwise would have to do,) twelve monthly funeral repasts. The practice is perhaps founded on, or justified by, the following passage from the Dvaita-nirnaya of Váchaspatimiçra, an author of paramount authority in the 'Maithila' country—"Its purpose is, for the man, that he may be excluded from the hell "denominated 'put;' for the woman, that some one may exist, capable "of performing her rite of Sapiṇḍana or association with departed "ancestors. Should individuals, capable of promoting these objects exist, "a son must not be adopted. Accordingly, from the resemblance to the "condition of being parents of male issue; where, the son of a whole "brother may exist, by a man, other persons,—and where the son of a rival wife may exist, by a female sons made, and so forth, must not

* v. Digest, Chap. IV. Sect. VIII

† v. Trans. of Mit. on Inh. Ch. II. Sect. X. § 11.

‡ D. Ch. Sect. VI.

"be affiliated. To this doctrine conform Asahaya, Udaya-kára, the "Kalpataru, the Parijáta, the Ratnákara and other works." This passage sufficiently explains, why the custom in question is restricted to widows. A husband is capable of performing the Sapiṇḍana, or Sapiṇḍi-karaṇa, (for the terms are synonimous) for his deceased wife. On the same principle should the husband leave an adoptive son who would necessarily be filially related to his wife, the widow could not adopt a peculiar son for herself. The son affiliated by a widow, according to the custom noticed, is not regarded as related in any way to her husband, and merely succeeds to her exclusive property.

NOTE VI.

Though it is admitted by his sanction, she may affiliate on the part of her husband (p. 324)]. On the subject of the adoption by a woman, this portion of a passage from Vasishṭha is usually cited. "Let not a woman either give or accept a son unless with the assent of her husband." Váchaspati-miçra, in another work, the Çráddha-Chintámani, maintains that the clause, " unless with the assent of her husband," refers only to the gift, and not the adoption of a son, a woman, as well as a Çúdra, from their inability to perform the sacrifice included in the prescribed ceremony, being both incapable of adopting a Dattaka or son given. In this opinion he is supported by Rudra-dára, the author of the Sudhi-Viveka, a work also current in Maithila. Both authors have perhaps, from their silence, left it doubtful, whether they allow the adoption of a Kritrima son, (at which no sacrifice is performed,) through the delegated agency of a wife or not: It would however be difficult to shew that such adoption were at variance with their express doctrines.—" This objection (says Mr. Colebrooke, in allusion " to the opinion of Váchaspati-miçra, just mentioned) may be obviated " by admitting a substitute for the performance of that ceremony: and " accordingly adoption by a woman, under authority from her husband, " is allowed by writers of the other schools of law: Nanda Paṇḍita, " however in his treatise on Adoption, restricts this to the case of a " woman, whose husband is living, since a widow can not, he observes, " have her husband's sanction to the acceptance of a son. On the " other hand, Bálam-bhaṭṭa,* contends that a woman's right of adopt- " ing, as well as of giving a son is common to the widow and the " wife. This is likewise the opinion of the author of the Vyavahâra- " Mayúkha: but while he admits that a widow may adopt a son with- " out her husband's previous authority, he requires that she should " have the express sanction of his kindred. Writers of the Gaura " school, on the contrary insist on a formal permission from the " husband declared in his life-time." It may be added that the author of the Viramitrodaya concurs in the opinion of the Vyavahára-Mayúkha just noticed. Of these works, the former is more particularly

* A commentator on the Mitákshará.

current at Benares, and the latter among the Marahâttas.* Nanda Paṇḍita has not omitted expressly to disallow the ability of kinsmen to authorize a widow to adopt.†

NOTE VII.

An only son (p. 325)]. Nanda Paṇḍita and the author of the Dattaka Chandriká, extend the prohibition to one of two brothers, and the author of the Mitákshará forbids the gift of the elder of many.‡

NOTE VIII.

Should assent or (being a minor) be given by a competent party (p. 326)]. The necessity of the assent of the object of a Kritrima adoption, to which the only parties are the adopter and adopted is obvious: and it would be highly unreasonable, could parents affect the rights of their adult son, by giving him away against his consent. Texts of law indeed are not wanting, prohibiting generally the gift of a son against his will: but it seems a correct construction, that such texts merely refer to the adult son. A minor legally can have no will.

NOTE IX.

Some difficulty exists in extracting a consistent doctrine (p. 326)]. Bálam-bhaṭṭa,§ and other authors seem to imply the necessity of the assent of the mother if alive and capable to the gift by the father: and Jagannátha in the Digest, while he admits the validity of the adoption intimates the ability of a son given without the assent of his mother, to perform her funeral rites. Nanda Paṇḍita,‖ Vijñáneçvara,¶ Váchaspati-miçra, Rudra-dhára, Chandeçvara and others, who admit the legality of the adoption of a son given without the assent of the mother by the father, seem to restrict the independent gift by a woman of her son to the case of the widow; and on the other hand, the author of the Dattaka Chandriká includes the cases wherein the husband may have emigrated or entered a religious order; and Bálam-bhaṭṭa provides, that the wife may give away her son without the consent of her husband, if the distress be urgent. A provision to this effect certainly appears consistent and reasonable. In any case in which a question might arise, it would naturally rest with the court, assisted by Paṇḍits to determine what special

* Mr. Colebrooke in his Preface to the Daya-bhága, &c.

† D. M. Sect. I. § 18.

‡ v. Trans. on Inh. Ch. I. Sect. XI. § 12.

§ Trans. Mit. on Inh. Note to Ch. I. Sect. XI. § 9.

‖ D. M. Sect. IV. § 12.

¶ Trans. of Mit. on Inh. Ch. I. Sect. XI. § 9.

circumstances of distress or necessity would justify or validate the gift of her son by a mother without the father's consent. It may with some reason be inferred, that one adopted as a son given, under an invalid gift, who voluntarily remained as son to his adopter, might be regarded as a Kritrima son.

NOTE X.

Chiefly, if not solely prevails (p. 327)]. In a Note on Chap. 10. Sect. X of the Digest, Mr. Colebrooke observes, that in Gaura or Bengal and most countries, other than Maithila sons are only adopted in the Dattaka form. The prevalence however of such practice should not vitiate a Kritrima adoption, unless indeed it appeared such mode were expressly prohibited by works on law of paramount local authority.

NOTE XI.

The doctrines of the Dattaka-Mímánsá *and* Dattaka-Chandriká (p. 327)]. The following appears to be that of Nanda Pandita, from his elaborate and intricate gloss on the passage referred to, which is attributed to the Kálika-purána.* The most preferable object for adoption is a child wholly uninitiated: his filial relation proceeds from the performance by the adopter of initiatory rites. Next in rank to him is one initiated as far as tonsure exclusive, for the performance of which, the period from the third to the fifth year is prescribed. Inferior as an object of adoption, is one, whose tonsure has been performed by his natural father, who, provided he be under six years of age may be adopted, and acquires filial relation to the adopter on the performance by that person of the different initiatory rites preceded by a sacrifice for male issue (putreshti). Such son, from his having been initiated in tonsure and other rites in both families is a Dvyámushyáyana, or son of two fathers. It is to be observed, that Nanda Pandita, in the abstruse gloss noticed, seems to have betrayed himself into an inconsistency. According to his explanation, if the boy proposed to be adopted have not been initiated in the rite of tonsure by his natural father, he cannot be adopted after having attained his fifth year: if however, he has been so initiated, he may be affiliated, (provided he be under six years of age,) a sacrifice and so forth being observed as already noticed. The subjoined appears to be the substance of the doctrine in the Dattaka-Chandriká, resulting from the most abstruse part of the work.† 1st. The most preferable object for adoption is one, for whose upanayana rite, the prescribed principal season has not elapsed: the previous rites performed by the natural father are not to be renewed. Such son becomes filially related, by the mere performance of the rite in question,—2d. Inferior as an object of adoption is one for the per-

* v. D. M. Sect. IV. § 22 and 54.

† v. D. Ch. Sect. II. § 20 and 33.

formance of the upanayana rite, on whom the principal season has elapsed. In the case of such adoption, the sacrifice for male issue must be observed, and the rites of tonsure and the rest be performed by the adopter on the adopted.

NOTE XII.

The most general and consistent rule which presents itself (p. 327)]. This is stated with reference to a text of Vasishṭha, and the supposed doctrine of the Dattaka-Chandriká detailed in the preceding note and founded on that text. This intimates, that the son given by initiation in the rite of upanayana, in the family of the adopter becomes a member of that family. Supposing the rule suggested to be accurate, it would remain to be determined, what circumstances would constitute a disqualification to the performance by the adopter of the rite in question on the adopted. The author of the Dattaka-Chandriká has left it doubtful, whether in his opinion, the celebration of that rite by the natural father would be an insuperable bar to its re-performance by the adopter, and hence to adoption: or, in the same manner, as the rite of tonsure, it might be renewed by the adopter in his own family. Another question would likewise arise, whether, even after the expiration of the secondary season for the celebration of the rite in question, as provided in the case of the natural father, the adopter by observing certain penances might not derive ability to perform the rite in question. A determination of these points in the present compilation could not without presumption be attempted. It may however be remarked, that it appears more reasonable to suppose, that the celebration in the family of his father, of so important a rite as the upanayana, or the expiration of the secondary period prescribed for the performance of that ceremony, should constitute an impediment to the adoption of a son given by precluding the capability of the rite referred to, being celebrated in the family and name of the adopter.

NOTE XIII.

They seem however agreed (p. 328)]. "The representation to "the king, and invitation of kinsmen, are for the sake of attestation, "and removing doubts as to the right of inheritance and not intended "as any legal essential," (Rudra-dhára in the Sudhi-viveka). 'Having "convened kinsmen'—This is for the sake of the succession of the "adopted son (dattaka)."—Váchaspati-miçra in the Çráddha-Chintámani.—So also in the Viváda-Ratna-kára of Chandeçvara.

NOTE XIV.

As referring exclusively to the son given (p. 328)]. In the forms propounded by Çaunaka and the rest, allusion is made in express terms to the son given; and that prescribed by Vasishṭha is directed

after advertence to the sons given bought and deserted. Nanda Paṇḍita insists, that these forms refer to the other adopted sons as well as the son given;* and the general application of the latter form is intimated in the Mitákshará.† The author of the Sudhi-viveka however, as well as those of the Çráddha-Chintámaṇi and Viváda-Ratna-kára introduce the form propounded by Vasishṭha under the head of the son given, as merely applicable to that description of son and Bálam-bhaṭṭa commenting on the passage of the Mitákshará referred to in the case of a Kṛitrima adoption, excepts the sacrifice or burnt offering directed in the text of Vasishṭha. It has been intimated, that the other parts are no legally essential portions of the form propounded by the author in question.

NOTE XV.

The adoption of a Kritrima son being, &c. (p. 328)]. The adoption of a Kṛitrima son is chiefly prevalent in the Maithila country; and is rarely practised in other parts of India.—"The practice (says Mr. "Colebrooke) of adopting sons given by their parents, was there "abolished by Çrí-Datta and Pratihasta, although the latter had been "himself adopted in that manner. Their motive was, lest a child "already registered in one family, being again registered in another, "a confusion of families and names should thence ensue. A son adopted "in the form so briefly noticed in the present section, does not lose "his claim to his own family, nor assume the surname of his adoptive "father: he merely performs obsequies and takes the inheritance."‡ The translator is informed that Çrí-Datta and Pratihasta have not abolished the practice noticed in their written works. A case of the nature alluded to had occurred: in consequence, a general assembly of Brahmans was held, at which the celebrated Paṇḍits mentioned presided, and it was there agreed, that for the future the practice of the Dattaka adoption should be discontinued. But though this mode of adoption does not accordingly now prevail in the Maithila country, unforbidden as it is by Váchaspati-miçra, and the best writers there current, it is not to be inferred, that if in any case preferred, such mode of affiliation would be illegal.

NOTE XVI.

Valid without the observance of any particular form (p. 328)]. In treating on the Kṛitrima son, Rudra-dhára in the Sudhi-viveka adds. —"The form to be observed is this. At an auspicious time, the adop- "ter of a son having bathed, addressing the person to be adopted "who has also bathed, and to whom he has given some acceptable "chattel, says, "Be my son." He replies. "I am become your son."

* See D. M. Sect. V. § 41, 50, &c.

† See Trans. of Mit. on Inh Chap. I. Sect. XI. § 15.

‡ Note to Chap. IV, Sect. X of the Digest.

"The giving some chattel to him, rises merely from custom. It is not "necessary to the adoption. The assent of both parties is the only "requisite; and a set form of speech is not essential."

NOTE XVII.

The Kritrima son in some instances may, but in all need not, &c. (p. 328)]. It would appear that the Kritrima son as usually affiliated in the Maithila country is not initiated in any rites in the family of his adopter. That in some cases, such rites, might be legally performed by the adopter may however be inferred.—1st. In the dubious passage of the Kálika-puráṇa, the performance of initiatory rites in the family of the adopter is declared to be necessary in the case of all adopted sons.—2d. If the complete induction of the adopted son, into the family of the adopter, be contemplated, the necessity of the observance of those rites, should apply as much to the one adoption as the other. Important distinctions would probably obtain, between Kritrima sons, who had or had not been initiated in the family of their adoptive fathers, as will be presently noticed.

NOTE XVIII.

The Kritrima in some instances may be invested with every filial right (p. 328)]. Consult the preceding two notes. The Kritrima son, as usually affiliated in the Maithila country would indeed take the estate of his adoptive father, but continues a member of the family of his natural father, and is not regarded as prolonging the line of his adopter.

NOTE XIX.

This rule would not apply to the Kritrima adopted son, &c. (p. 329)]. In respect to this rule, it may be first observed, that Bálambhaṭṭa provides generally, that the given son is competent to inherit the estate, and perform the obsequies of his natural father, should he have no other male issue.* The rule in question is founded on a text of Manu,† in which the son given only is mentioned. In the Mitákshará, it is incidentally stated that the mention of the given son in this text, is intended for any adopted son; but it by no means appears that, this is a generally received exposition and could only hold in certain cases, (if any such might occur,) where the adopted son, were an orphan, or tacitly relinquished by his parents, and solely and exclusively initiated in the name and family of the adopter. It would certainly be inconsistent with the principles of Hindu law, could the filial relation towards the father, without any act on his

* v. Trans. of Mit. on Inh. Note to Ch. I, Sect. XI. § 32.

† Cited in D. M. Sect. VI. § 6.

part be divested from the son. In the case of the Kritrima adopted son, as usually affiliated in Maithila, no doubt as to his retaining relation to the family of his natural father can exist.

NOTE XX.

But likewise lineally and collaterally (p. 329)]. This position, obviously resulting from adoption is supported by the Mitákshará*. A doubt indeed with reference to passages in the Dattaka-Mímánsá† and Dattaka-Chandriká‡ may be entertained, as to the accuracy of this position, as a general and unrestricted rule. It however appears, more reasonable, to construe those passages, as well as authorities,—on which they are founded, and which declare the relation of the adopted son as Sapinda, in the family of the adopter, to extend to three degrees only,—as referring merely to the oblation of the funeral cake, impurity on occasions of deaths and births, and disability of marriage in the family of the adopter. This in fact is intimated by Nanda Pandita.§

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Would not apply to the Kritrima son as usually, (p. 329)]. in the Dvaita Nirnaya, Váchaspati-misra declares, that no relation obtains between the Kritrima adopted son and the father of the adopter. From which it is to be inferred, that such adopted son could not inherit of that person, and a fortiori from the collateral kinsman of the adopter. The same inference in fact results from the circumstance of the Kritrima son in question, not being considered as a member of his adopter's family. It may however be concluded, that where the adopter might die in family-co-parcenery with his father and brethren, his Kritrima son would be entitled to receive on division his share.

NOTE XXII.

Receives a quarter share (p. 330)]. This rule is founded on texts of Vasishtha and Kátyáyana.|| The latter of which however is variously read. 'A third part' is substituted by some for the more prevalent reading, 'a fourth part:' the difference being adjusted with reference to the qualities of the claimants. It is not easy to determine at least satisfactorily the exact right conferred on the adopted son by the expression, 'chaturthánça (a fourth part or quarter share). If

* v. Trans. on Inh. Ch. I. Sect. XI. § 30, 31.
† D. M. Sect. VI. § 32. et seq.
‡ D. C. Sect. III. § 18. 19. 20,
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‡ D. C. Sect. III. § 18. 19. 20,
§ D. M. Sect. VIII.
|| Cited respectively in D. Ch. Sect. V. § 16, 17

it be contended, as it perhaps justly may, that by the expression in question, a specific share of the whole estate is assigned to the adopted son, a great inconsistency would result—Where, a division of heritage might take place between an adopted son, and several legitimate sons subsequently born, the share of the former would, in some instances exceed those of the latter. This objection might be obviated by adopting the exposition of Nanda Paṇḍita, who explains the terms referred to as signifying 'a quarter share; not an entire share'* intimating probably thereby that the adopted son under the circumstances proposed should receive the fourth of the share which would be allotted to him, supposing him to be a real legitimate son. Thus, if 1,700 Rupees or Bíghas were to be distributed between one adopted and four real legitimate sons subsequently born, the portion of the former would be 85, while each of the latter would take 403·75, or perhaps, the objection stated might be more satisfactorily obviated, by construing the expression, 'a fourth part or quarter share,' to signify the fourth of the share received by a legitimate son. Thus in the case supposed, the share of the adopted would be 100, and those allotted to each of the legitimate sons 400.

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* D. M. Sect. V. § 40.

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